



Transcript of **Gary Olsen**

Friday, March 17, 2023

Lucasys Inc. v. Powerplan, Inc.

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1
2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE NORTHERN DISTRICT OF GEORGIA
4 ATLANTA DIVISION
5

6 LUCASYS INC.,)
7)
8 PLAINTIFF,)
9 vs.) CASE NO. 1:20-CV-02987-AT
10)
11) JUDGE AMY TOTENBERG
12 POWERPLAN, INC.,)
13)
14 DEFENDANT.)
15

16 *****
17

18 The following deposition of GARY OLSEN, EXPERT WITNESS,
19 was taken pursuant to stipulations contained herein, the
20 reading and signing of the deposition waived before Collette
21 Jackson, Certified Court Reporter in the State of Georgia, on
22 March 17, 2023, at Robbins Alloy Belinfante Littlefield LLC,
23 500 14th Street, N.W., Atlanta, Georgia 30318 at 9:30 a.m.
24
25

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25 LUKE STEVENSON (VIDEOGRAPHER)

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P R O C E E D I N G S

VIDEOGRAPHER: All righty. Good morning, everybody.

We're now on the record for the video recorded deposition of

Gary Olsen, taken in the matter of Lucasys, Inc., versus

Powerplan, Inc. Today is Friday, March 17, 2023, and our time

on the record is 09:28 a.m., Eastern standard time. This

deposition is being conducted at Robbins Alloy, Belinfante

Littlefield, LLC, in Atlanta, Georgia. My name is Duke

Stevenson. I'm the videographer. And our court reporter today

is Collette Jackson. We both represent

Trustpoint.One/Alderson. Will counsel please introduce

themselves for the record? After which, will the court porter

please swear in the witness?

MR. FRIEDMAN: Steven Friedman, for Defendant

PowerPlan, Inc.

MR. MAYES: Joshua Mayes, for Plaintiff Lucasys, Inc.

MR. ALLOY: Jason Alloy, for Lucasys, Inc.

MR. FRIEDMAN: And then, just for the record, then

we've got others just listening in on Zoom counsel?

MR. MAYES: Yeah, Luis Blanquez and Jon Cieslak from

Bona Law.

COURT REPORTER: Mr. Olsen, will you raise your right

hand.

WITNESS: (Witness complies)

COURT REPORTER: Do you solemnly swear or affirm that

1 the testimony that you're about to give, will be the truth, the
2 whole truth, nothing but the truth? If so, say I do.

3 WITNESS: I do.

4 Whereupon,

5 GARY OLSEN

6 was called as a deponent herein and, having first been duly
7 sworn, was examined and deposed as follows:

8 C R O S S - E X A M I N A T I O N

9 BY MR. FRIEDMAN:

10 Q. Good morning, Mr. Olsen. I'm Steve Friedman. We've
11 never met before, correct?

12 A. Correct.

13 Q. Okay. Well, get this for getting started. I've
14 marked your expert report as Olsen 1. I'll hand that to you.
15 I got an extra one here. I represent to you that it's a
16 complete copy of the expert report that you issued in this case
17 on December 16, 2022. Okay?

18 (Defendant's Exhibit No. Olsen 1 marked and identified.)

19 A. Okay.

20 Q. Looking at your CV, it looks like you testified
21 deposition four times in 2022?

22 A. Just 22. That sounds right.

23 Q. Okay. I think there was also an arbitration hearing
24 in 2022 that you testified at?

25 A. I don't think in '22.

1 Q. Okay. Let me -- if you look at the reports and
2 testimony -- I thought I saw one. Maybe not. How about in
3 2023? Have you testified in 2023?

4 A. One time last week.

5 Q. Where was that?

6 A. It was a Zoom deposition.

7 Q. What kind of case?

8 A. It was in the healthcare industry, and it involved
9 data breach damages.

10 Q. Have you ever worked with the Robbins Firm before?

11 A. No, this is my first time.

12 Q. How about the Bona Law Firm?

13 A. No.

14 Q. Sir, does this report include all the opinions you
15 were requested to provide in this case?

16 A. It does.

17 Q. And does it include all the opinions you intend to
18 offer at trial?

19 A. It does.

20 Q. Are there any opinions in this report that have
21 changed since you issued it in December of 2022?

22 A. No, there hasn't been any changes.

23 Q. And I understand from the report that you're billing
24 at 575 an hour?

25 A. That sounds right.

1 Q. And are there other employees at B. Riley that worked
2 on this engagement?

3 A. Yes.

4 Q. And just generally, what do they do?

5 A. They assisted with the analysis and research, with
6 the review of the documents and deposition testimony. We
7 discussed as a team our approach to damages.

8 Q. Okay. And they all reported to you?

9 A. Yes.

10 Q. About how many employees of B. Riley other than
11 yourself worked on this report?

12 A. There were primarily three or four. One has since
13 left the firm.

14 Q. Okay. And just approximately how much has B. Riley
15 charged Lucasys for this engagement?

16 A. Actually, I don't know the figure.

17 Q. Are you responsible for sending out the invoices?

18 A. Only recently, up until a few months ago it was
19 someone else.

20 Q. Have you reviewed any of the invoices?

21 A. Just the last two.

22 Q. You don't have an estimate, within a half million
23 dollars, more or less?

24 A. I would say less than a half million.

25 Q. How about \$200,000?

1 A. Probably more than 200.

2 Q. Sir, have you ever testified in an antitrust case
3 before?

4 A. I've worked on antitrust cases, but this is the first
5 time I've been a testifier on an antitrust case.

6 Q. And you're not an expert in antitrust law, correct?

7 A. No, I'm not an expert in antitrust law.

8 Q. And you're not an expert in antitrust injury,
9 correct?

10 A. From the legal perspective, no.

11 Q. And you're not an expert in antitrust markets
12 definitions, right?

13 A. No, I don't claim to be.

14 Q. And you're not an expert in antitrust causation, the
15 concept of antitrust causation?

16 A. I'm certainly familiar with the topic of causation,
17 but I wouldn't consider myself an expert in causation.

18 Q. And if I understand from your report, you're not
19 planning to offer any opinions regarding liability in this
20 case, correct?

21 A. Correct, I'm assuming liability.

22 Q. And you also not offering any opinions regarding
23 proximate cause in this case, correct?

24 A. I do not have any opinions regarding approximate
25 cause.

1 Q. As a matter of fact, as it states in your report, you
2 assume both liability and proximate cause, correct?

3 A. Correct.

4 Q. All right. If we could look at the report. In
5 particular, I'd like to start at paragraph 14, please. And in
6 paragraph 14, you describe four particular software products,
7 correct?

8 A. Yes.

9 Q. And those are software products that you understand
10 are offered by the Plaintiff Lucasys to customers?

11 A. Yes.

12 Q. And those four software products, in addition to
13 consulting services are the five areas in which you've analyzed
14 lost revenue and lost profits for Lucasys, correct?

15 A. I would agree.

16 Q. It's just those five topics, right? The four
17 software products and consulting services, there's nothing else
18 that you're aware of, correct?

19 A. Nothing else that I've included in my analysis.

20 Q. Great. Have you ever seen a demonstration of these
21 four products?

22 A. I've heard them described. I haven't physically seen
23 the software in action.

24 Q. Okay. Other than -- you cite to Lucasys' web page as
25 the source for your description of these four software products

1 in paragraph 14. Other than that, is there any other source
2 for your understanding of what these products are and what they
3 do?

4 A. Other than the website that I had several discussions
5 with the CEO of Lucasys.

6 Q. Okay. Mr. Lantukh, correct?

7 A. Yes.

8 Q. And do you have an understanding of how these
9 products compare to software products offered by PowerPlan?

10 A. As far as the specific technical details, I do not.

11 Q. What is your general understanding?

12 A. At the time, my general understanding was that
13 PowerPlan's products were an application based versus Lucasys'
14 products were cloud based.

15 Q. Okay. What about functionality? What is your
16 understanding as to what functionality PowerPlan products have
17 versus these four software products offered by Lucasys?

18 A. Well, my understanding is PowerPlan doesn't offer a
19 product comparable to either Copilot or Nova, whereas they do
20 offer products comparable to deferred tax and depreciation.

21 Q. You say comparable that PowerPlan has products that
22 are comparable to Lucasys' deferred tax and tax depreciation.
23 Do you have an understanding of how those products differ in
24 terms of functionality?

25 A. Specifically, no.

1 Q. Generally, do you have some general understanding?

2 A. In terms of how they differ or how they are the same?

3 Q. How they differ?

4 A. Other than the cloud based versus not cloud based,
5 that's the main difference that I recall.

6 Q. Okay. You understand that PowerPlan has a software
7 offering called PowerTax?

8 A. Yes, I do understand that.

9 Q. And do you have an understanding of what PowerTax
10 entails?

11 A. My understanding is PowerTax is a suite of software
12 products that have multiple different functions.

13 Q. And there are modules within PowerTax that include
14 the functionality of deferred tax and tax depreciation. Is
15 that your understanding?

16 A. That is correct.

17 Q. And you understand that those are different modules
18 that can be purchased separately?

19 A. I do understand that depreciation and deferred tax
20 can be purchased separately.

21 Q. And the same thing with the Lucasys' products,
22 correct? You understand that they can be purchased separately?

23 A. Yes.

24 Q. Do you have an understanding whether the Copilot and
25 the Nova are compatible with PowerTax products?

1 A. I believe I have read some documents that indicate
2 that. I don't know about Nova, but certainly Copilot mentioned
3 some compatibility. I believe I've read some documents that
4 mentioned that.

5 Q. Okay. But that's not of import to your opinion,
6 though, is it?

7 A. No.

8 Q. All right. In addition to the four software
9 products, as we stated before, you also analyzed lost revenue
10 in consulting services, correct?

11 A. Correct.

12 Q. And what is your understanding of what those
13 consulting services entail?

14 A. My understanding is the consulting services involve
15 providing tax services to assist clients with the various needs
16 they have, due to the regulations involved with investor owned
17 utilities.

18 Q. How does those -- strike that. How do those
19 consulting services, if any way, relate to the four software
20 products listed in paragraph 14?

21 A. Well, I know there can be some overlap between the
22 services. I know, for example, Nova is a tax based balance
23 sheet software product. And I know that Lucasys has performed
24 consulting services in the areas of tax based balance sheet.

25 Q. Do you know, does Lucasys implement Copilot or Nova

1 as part of its consulting services to customers?

2 A. As part of consulting services, my understanding is
3 that they're not implementing software unless that's what the
4 customer is ordering.

5 Q. So you understand it'd be a separate purchase order
6 or something like that, if there was a software product in
7 addition to consulting services?

8 A. Whether it's a purchase order agreement I don't know,
9 but I view those as separate.

10 Q. So you didn't consider there any overlap in your
11 damages analysis between lost revenue for consulting services
12 and lost revenue for any other four software products?

13 A. Yes, there's a number of different professional fees
14 I considered in my analysis, including implementation fees,
15 data cleansing fees, and then consulting services. I do
16 understand those all to be separate.

17 Q. Okay. So going back to the four products in
18 paragraph 14, you have no understanding as to which product
19 fits into which antitrust market, correct?

20 A. Can you describe what you mean by antitrust market?

21 Q. Yeah, antitrust market as analyzed by Dr. Meyer in
22 this case. Have you read Dr. Meyer's report?

23 A. No.

24 Q. Has anyone told you about anything about Dr. Meyer's
25 report?

1 A. No.

2 Q. I will tell you, Dr. Meyer is an expert that the
3 Plaintiffs have engaged in this case, and she defines antitrust
4 markets for this case. Okay. And she fits different products
5 in different categories. You don't have any understanding of
6 that though, correct?

7 A. No.

8 Q. And you don't tend to offer any opinions as to what
9 antitrust market, any of these particular products fit into,
10 correct?

11 A. I do not.

12 Q. Mr. Olsen, have you read Mr. Hilliard's report?

13 A. No.

14 Q. Has anyone told you anything about a report from Mr.
15 Brooks Hilliard that was issued in this case?

16 A. No.

17 Q. So you don't have any opinions regarding the
18 reasonableness of PowerPlan's license agreements with its
19 customers, correct?

20 A. I do not.

21 Q. How about the reasonableness of the terms of the
22 authorized vendor agreements between PowerPlan and third party
23 providers of consulting services?

24 A. I do not have any opinions on that topic.

25 Q. Mr. Olsen, have you ever spoken with anyone who is an

1 end user of PowerTax?

2 A. No.

3 Q. How about someone who's an end user of one of the
4 four products software products listed in paragraph 14?

5 A. No. I have not spoken with any clients of either
6 Lucasys or PowerPlan.

7 Q. Thanks, you got my next question. I'll ask it now.
8 Exactly where I was going.

9 A. All about efficiency.

10 Q. It's all good. And so it's an assumption of your
11 damage model that certain customers did not purchase Lucasys'
12 software because of PowerPlan's alleged conduct as described in
13 the amended complaint, correct?

14 A. That's a component, correct.

15 Q. I'm sorry?

16 A. That's a component, correct.

17 Q. A component. What do you mean by that?

18 A. That one of the components of my damages calculation
19 is the causation element.

20 Q. And my question was, just to make sure the record is
21 clear, that it is an assumption of your damage model that
22 certain customers did not purchase Lucasys' products because of
23 PowerPlan's alleged conduct, correct?

24 A. Correct.

25 Q. Mr. Olsen, do you have experience with Enterprise

1 Software?

2 A. I have experience with software as a service, which I
3 understand this to be.

4 Q. Do you have an understanding what Enterprise Software
5 is, in that term?

6 A. Not sure how you might be using that.

7 Q. Okay. So I'm using that term as software that is
8 used by businesses for -- large businesses for their business
9 operations. Oracle and SAP come to mind.

10 A. Okay.

11 Q. All right. Have you testified any cases involving
12 Enterprise Software?

13 A. I testified in 2021 on a couple of cases that
14 involved software in the telecom industry that sounds like that
15 might fit that description.

16 Q. Okay. And was your testimony in that case related to
17 potential lost profits?

18 A. Yes.

19 Q. And could you tell us a little more about that
20 opinion?

21 A. There were two cases, related cases between the same
22 parties. One was a patent infringement case and one was a
23 trade secrets case. And I testified on behalf of the Defendant
24 in those cases involving both lost profits and reasonable
25 royalties.

1 Q. Okay. Have you ever testified in a matter relating
2 to software for tax accounting?

3 A. Specifically tax accounting, no. I did testify in a
4 matter involving software as a service company involving back
5 of the office operations, which included the accounting
6 function.

7 Q. All right. If you look at your report on page five
8 in particular, let's take a look at footnote three. About
9 halfway down, you make a reference to dissatisfied PowerPlan
10 customers. Do you see that?

11 A. I do.

12 Q. And who are those customers?

13 A. I don't recall names.

14 Q. Was AEP one of them?

15 A. I don't know. I just recall that the summary section
16 from the Stack's report, which mentions many customers were
17 dissatisfied.

18 Q. Okay. And you have no opinion on the veracity of
19 those statements in the Stack's report, do you?

20 A. No, I assume they were accurate.

21 Q. Okay. And you have no opinion as to -- strike that.
22 I know you read the depositions of the customers that were
23 deposed in this case. They're listed in your report. And
24 those are AEP, NextEra, Liberty and Suez. Does that sound
25 right?

1 A. Yes.

2 Q. We're not aware of any other customer depositions
3 that were taken in this case?

4 A. Other customers. No other than the four that you
5 mentioned.

6 Q. And you did not attempt to interview any customers,
7 correct?

8 A. No, I did not interview any customers.

9 Q. Why not?

10 A. In my experience, that would be unusual.

11 Q. Did you ask counsel to depose any more customers?

12 A. No.

13 Q. Why not?

14 A. Because I felt the information I had available was
15 sufficient for my needs in calculating damage.

16 Q. Coming back to paragraph 14 and it identifies four
17 software products that were offered by Lucasys, correct?

18 A. Yes.

19 Q. Do you know the date of when any of these four
20 products was first offered by Lucasys?

21 A. I know they were first offered in 2019.

22 Q. Do you know the date when any of these four products
23 was completed by Lucasys?

24 A. I know all four by now have been developed and
25 completed, so it would be sometime between 2019 and now.

1 Q. So did you review any interrogatory responses as part
2 of your engagement?

3 A. I don't recall.

4 Q. I'm going to go ahead and mark Exhibit 2 for you.
5 And I'll represent to you that this is Plaintiff's objections
6 and responses to Defendant's first set of interrogatories.
7 Okay?

8 (Defendant's Exhibit No. Olsen 2 marked and identified.)

9 A. Okay.

10 Q. And in particular, I'd like you to look at the
11 response to interrogatory number 7 and just happens to be on
12 page 7 too. If you want to read the actual interrogatory,
13 that's at the bottom of page 7. And then on page 8, it lists
14 on the bullet points. This is provided by the Plaintiff, for
15 each of the four software products that are referenced in
16 paragraph 14 of your report, correct?

17 A. Includes the four and two others.

18 Q. Okay. And I see that the bullet point for deferred
19 tax says that "Deferred tax development began in 2018 and is
20 ongoing by Steven String and Jonathan Porter". And I'll tell
21 you that if you look at the very last page, the date of
22 verification is interrogatories is November 16, 2021. Okay?

23 A. Okay.

24 Q. Did you consider the fact that deferred tax was --
25 development was ongoing in 2021?

1 A. No, my understanding was that the basic product was
2 developed and available, and then they tailor each
3 implementation for each client.

4 Q. And what's that understanding based on?

5 A. Discussions with Vadim Lantukh.

6 Q. That's it? No others?

7 A. I believe Steven String I spoke with at some point as
8 well.

9 Q. Okay. But you didn't actually see a version of
10 deferred tax that was ready for use prior to 2021, right?

11 A. I haven't seen (unintelligible) any of the products,
12 no.

13 Q. And you're not aware of any customer that was using
14 or had used Lucasys' deferred tax product, correct?

15 A. No. I understand that because of the actions of
16 PowerPlan -- Lucasys wasn't unable to implement this product.

17 Q. And you're not aware of any customer that purchased
18 deferred tax software product from Lucasys in 2019, correct?

19 A. I'm certainly aware of interest in the product, in
20 purchasing the product, but I'm not aware that Lucasys was able
21 to implement it at any --

22 Q. We'll get to that. Now let's look at Nova. It says
23 "Nova development began in 2020 and is ongoing". Do you see
24 that?

25 A. I do.

1 Q. Did you consider that in forming your opinion? That
2 statement by Lucasys?

3 A. Yes, that fits with my understanding.

4 Q. All right. And so if development began in 2020, how
5 could it have been sold in 2019?

6 A. Because how these products are sold, the
7 implementation period for these products is quite long. So an
8 agreement entered into in 2019 could last multiple years.

9 Q. And that's true for the Nova product, not just the
10 deferred tax and depreciation tax product --

11 A. Yes.

12 Q. -- is that your understanding?

13 A. The timeline I saw for Nova started in 2019 and went
14 into 2021, if memory serves.

15 Q. So the timeline you saw started in 2019, but this
16 statement says that "Development began in 2020". Do you see
17 that? How is that consistent?

18 A. I believe that's consistent because Lucasys was
19 intending to develop the products as they implemented them.

20 Q. And what is your source for that information?

21 A. Again, discussions with Mr. String and Mr. Lantukh.

22 Q. Anything else other than your discussions with those
23 two individuals?

24 A. Their deposition testimony, I believe is consistent
25 with that as well.

1 Q. Okay. And that's an assumption of your model too,
2 correct? If that's information correct?

3 A. Yes.

4 Q. And then see depreciation, the fourth bullet point.
5 It says "Depreciation design and development began in 2021".
6 Did you consider that in issuing your report?

7 A. Yes.

8 Q. Mr. Olsen, do you have any opinions as to whether or
9 not there was harm to competition in the antitrust sense, due
10 to PowerPlan's actions?

11 A. I do not have any opinions on that topic.

12 Q. I understand that you do not allocate the alleged
13 damages by the claims in this case, correct?

14 A. Correct.

15 Q. And you didn't attempt to tie any of the damages to
16 any particular claim that's alleged in the amended complaint,
17 correct?

18 A. Correct.

19 Q. And so if PowerPlan were to be found liable for some
20 of the claims and not for other claims, would that affect your
21 damage model?

22 A. As I sit here, I don't know how it would.

23 Q. It could affect your damage model, right?

24 A. I guess that's possible.

25 Q. Same question for the timing of the alleged improper

1 actions by PowerPlan. If the timing of the alleged improper
2 actions were determined to have occurred after 2019, for
3 instance, that would affect your damage model, wouldn't it?

4 A. If the actions of PowerPlan were after 2019?

5 Q. Correct.

6 A. Well, I believe the actions of PowerPlan started in
7 2019 and have continued beyond 2019.

8 Q. My question is, assume that the court determines that
9 any improper actions by PowerPlan occurred after 2019. Would
10 that change your damage model?

11 A. Well, it wouldn't change the model as I provided it.

12 Q. It would change the results of your model, wouldn't
13 it?

14 A. I'm not sure that it would.

15 Q. How could there be damages in 2019 if the alleged
16 proper conduct occurred after 2019, sir?

17 A. I don't have any damages in 2019.

18 Q. Okay. We'll get to that.

19 A. They start after.

20 Q. All right. So let's do the same hypothetical for
21 2020. If the alleged improper conduct by PowerPlan occurred
22 after 2020, would that affect your damage model?

23 A. The model would still be the same. Now, whether
24 there would need to be any adjustments to how it's applied,
25 might need to be taken into consideration.

1 Q. Isn't it an important facet of your model that
2 Lucasys lost opportunities to sell software products and
3 consulting services to customers in 2019, due to PowerPlan's
4 alleged improper conduct?

5 A. Yes, I've assumed that improper conduct started in
6 2019.

7 Q. Not just that the improper conduct started in 2019,
8 but part of your model assumes that Lucasys lost customer
9 opportunities in 2019, due to PowerPlan's alleged improper
10 conduct, correct?

11 A. Correct. Starting in 2019 and continuing and beyond.

12 Q. If you look at paragraph 20 of your report. In
13 paragraph 20 discusses at the bottom of the paragraph a
14 contract that Lucasys has had with AEP. Do you see that?

15 A. I do.

16 Q. And you saw that contract?

17 A. I did.

18 Q. And that contract was for consulting services, not
19 software, correct?

20 A. I don't believe I agree with that statement.

21 Q. I'm going to marked that Olsen, Exhibit 3. This is
22 the document cited in footnote 24 of your report. Matches up.
23 (Defendant's Exhibit No. Olsen 3 marked and identified.)

24 A. Yes, it appears to be.

25 Q. So this is the contract that you're referring to in

1 paragraph 20, correct?

2 A. Yes.

3 Q. And we can look at the "Statement of Work" at the end
4 of this document. Maybe three pages. I guess. The bait stamp
5 of the first page of the "Statement of Work" is Lucasys
6 RPD0002184. We're on the same page?

7 A. Yes, I see that.

8 Q. Okay. And under "Scope of the Statement of Work",
9 there's a middle paragraph. It says, "As part of this
10 engagement, contractor and client will evaluate the feasibility
11 of Lucasys' software solutions to meet client's needs". Do you
12 see that?

13 A. Yes.

14 Q. You don't equate that to the sale of software, do
15 you?

16 A. Well, certainly they were contemplating software
17 solutions. Yes.

18 Q. Okay. Yeah. Contemplating software solutions. That
19 statement is not the actual sale of software solutions, is it?

20 A. As I understand, PowerPlan didn't permit Lucasys to
21 get that far.

22 Q. Sir, can you just answer my question, please? I
23 didn't ask that. Do you want me to ask the question again?

24 A. Sure.

25 Q. My question for you is, that that sentence does not

1 entail the sale of a software product by Lucasys to AEP, does
2 it?

3 A. That one sentence out of this contract by itself, no.

4 Q. Can you point to anything else in this contract, that
5 this contract states that there is a sale of software product
6 by Lucasys to AEP?

7 A. Yes.

8 Q. Point it out to me, please.

9 A. First page.

10 Q. So what does that say?

11 A. "Description of Service Work software and consulting
12 services for tax and financial accounting".

13 Q. And so what is that software on the first page? What
14 product is that?

15 A. The parties were contemplating, as I understand,
16 deferred, tax, Copilot, and depreciation.

17 Q. Okay. And you equate contemplating as an actual sale
18 of software?

19 A. This is certainly the first step of that process,
20 yes.

21 Q. And you agree that that's just the first step? There
22 were ultimately other steps that had to be done before there
23 would be a sale of software, correct?

24 A. Before that -- if you're talking sale in terms of
25 from an accounting perspective and booking the revenue, then

1 yes, there's additional steps that would be the case with any
2 contract.

3 Q. There's no license agreement for software in this
4 document, right?

5 A. I believe there is reference to a license.

6 Q. Let me ask this question. A license agreement for a
7 specific software product. Do you see that in this document?

8 A. Yes.

9 Q. Elucidate, please.

10 A. On page 4, under "License Software", where it says,
11 "Provider hereby grants customer a non-exclusive license to
12 reproduce and use the license software".

13 Q. My question is, what is the specific license
14 software?

15 A. My understanding that parties were talking about
16 deferred, tax, depreciation, and Copilot.

17 Q. Where in this document are any of those three tax
18 software products mentioned?

19 A. There's other documents that discuss those three
20 products.

21 Q. But you chose not to cite those in your report?

22 A. Yes, I did.

23 Q. Have you read the deposition of the AEP corporate
24 representative?

25 A. Yes.

1 Q. And based upon your reading that deposition, what is
2 your understanding of the reason why AEP did not purchase a
3 software product from Lucasys in 2019?

4 A. I haven't formed my conclusion based off that
5 deposition alone.

6 Q. What else do you base your conclusion on?

7 A. All the evidence in the record.

8 Q. What in particular?

9 A. In particular, all the conduct between AEP and
10 Lucasys and the actions of PowerPlan. There's several
11 documents that cover all the events that transpired.

12 Q. Can you recall any of those specific documents as you
13 sit here today?

14 A. By Bates number, no.

15 Q. Just describe them to me.

16 A. There's email communications internally amongst
17 PowerPlan personnel. There's communications back and forth
18 between PowerPlan and AEP. There's communications between
19 Power -- sorry, not PowerPlan. AEP and Lucasys. There's
20 deposition testimony from a number of parties that all cover
21 this topic.

22 Q. And it's your testimony that those are more important
23 to you than the direct statement of the corporate
24 representative of AEP in determining why AEP decided not to
25 license software from Lucasys in 2019?

1 A. I don't have an opinion that certain documents are
2 more important. I've considered all of them. It would be
3 inappropriate just to look at one with blinders on and not
4 consider others.

5 Q. You didn't understand my question. Can you read the
6 question back, please?

7 (Court Reporter was asked to read back)

8 BY MR. FRIEDMAN: (Resuming)

9 Q. Sir, you're not aware of anything in the record from
10 AEP that contradicts the statements of its corporate
11 representative's deposition, correct?

12 A. I have to think about that. Are there specific
13 statements you're asking about?

14 Q. Email, anything you have in the record that you're
15 aware of in the record from altered by AEP that contradicts the
16 statements of its 30(b)(6) witness?

17 A. Which statements?

18 Q. Any statement in the 30(b)(6) deposition?

19 MR. MAYES: Objection. Lack of foundation.

20 BY MR. FRIEDMAN: (Resuming)

21 Q. Yeah. There isn't such a thing, is there? You're
22 not aware of anything, correct?

23 MR. MAYES: Objection.

24 WITNESS: I'm not sure.

25 BY MR. FRIEDMAN: (Resuming)

1 Q. But this is all academic because you assume, for
2 purposes of your report, that PowerPlan's actions is the cause
3 of AEP not purchasing software from Lucasys, correct?

4 A. Well, it's an informed assumption, yes.

5 Q. But you don't have an expert opinion on whether it's
6 accurate or not, correct? That's not part of your expertise,
7 correct?

8 A. No. I have no opinions on the accuracy of the
9 underlying documents.

10 Q. As a matter of fact, why don't we look at schedule 12
11 while we're on this. I'm sorry, schedule 10. Should know that
12 by heart. And if you could look at page 17. I think it's the
13 third page in schedule 10. Page 17 of 38 in your schedules?

14 A. Yeah, I just don't follow you about -- what you mean
15 by the third page of schedule 10. There's only one page,
16 schedule 10.

17 Q. Well, I don't know about that. It looks to me like
18 schedule 10 starts on page 16. So I guess I'm off one. It's
19 the second page of schedule 10. Is that accurate?

20 A. Okay. I'm with you now.

21 Q. Yeah, I'm sorry I said third. I was off by one.
22 It's two pages to schedule 10, correct?

23 A. Yes.

24 Q. And the second page title is "Potential Customer and
25 But-For Customer Analysis", we're on the same page now?

1 A. Yes.

2 Q. And in the column for 2019, in this schedule, there
3 are a series of numbers for the four software products we
4 discussed and consulting services. The five areas we discussed
5 earlier, correct?

6 A. Yes.

7 Q. And in particular for the row, "The But-For Lucasys'
8 deferred tax customers". What does that represent? That row.

9 A. The row shade is in pink here?

10 Q. Row one, "But-For Lucasys' deferred tax customers".

11 A. Row one, that's the number of customers year by year,
12 that I have calculated as would have purchased deferred tax
13 from Lucasys.

14 Q. Okay. And there was a footnote 3, right.

15 A. I see that.

16 Q. And it says, "Assuming AEP and Suez would have become
17 deferred tax customers of Lucasys in 2019", right?

18 A. Yes. I see that.

19 Q. And then I see there's two citations. One of them is
20 the document we just looked at, the AEP document.

21 A. That looks right.

22 Q. Okay. And the other one, why don't I go ahead and
23 mark the other one. Just make sure I got the right Bates
24 numbers. It's easy to mix this up, right. Let's see. 23272,
25 23272. All right. I handed you Olsen 4. And it's Lucasys

1 23272. And it's the second document that's cited in the
2 footnote 3 on this page of schedule 10, correct?

3 (Defendant's Exhibit No. Olsen 4 marked and identified.)

4 A. Yes, it appears to be.

5 Q. And the footnote says, "Assuming AEP and Suez would
6 have become deferred tax customers of Lucasys in 2019". And
7 that is what's represented by the two in the column for 2019,
8 correct?

9 A. Yes.

10 Q. And that's an assumption of your model that AEP and
11 Suez would have become deferred tax customers of Lucasys in
12 2019, but for PowerPlan's, alleged conduct, right?

13 A. Correct.

14 Q. And if that assumption was not correct, then your
15 damages model would have to be altered, wouldn't it?

16 A. If that assumption is not correct yes, I'd have to
17 reconsider.

18 Q. It would affect the result of your damage model,
19 wouldn't it?

20 A. A high likelihood.

21 Q. High likelihood, or it definitely would have?

22 A. I'd have to consider all the new facts in this
23 scenario you're proposing.

24 Q. You're seriously stating that your damage model
25 possibly would not be different if neither Suez nor AEP would

1 have become a deferred tax customer of Lucasys in 2019, But-For
2 PowerPlan's conduct. Is that your testimony?

3 MR. MAYES: Objection. Asked and answered.

4 BY MR. FRIEDMAN: (Resuming)

5 Q. Can you answer it again, though?

6 A. My testimony is that I can't give you a definite
7 answer until I know all the facts and circumstances in the
8 hypothetical you're proposing.

9 Q. Same thing is true for the next footnote. Footnote
10 4. Footnote 4. That's in the second row, correct? And this
11 one deals with the depreciation software, correct?

12 A. Correct.

13 Q. And again, for purposes of the depreciation software,
14 you assume AEP would have become a depreciation customer in
15 2019, But-For PowerPlan's conduct, correct?

16 A. Yes.

17 Q. And your citation is, again, to the same document we
18 looked at earlier?

19 A. It is.

20 Q. That statement of work and agreement, correct?

21 A. Yes.

22 Q. And row 3. That is But-For Lucasys' Copilot
23 customers. You lists three of them for that one, right?

24 A. For Copilot, yes. AEP, Suez, and Florida Power &
25 Light.

1 Q. And so, again, you assume, it says right there in
2 footnote 5, your word "Assuming", not mine, right? It says
3 "Assuming AEP, Suez and FPL would have become Copilot customers
4 in 2019". And again, it's But-For the behavior of PowerPlan,
5 right? That's an assumption of your model.

6 A. Yes, I believe those are reasonable assumptions given
7 the record I've reviewed.

8 Q. Okay. Well, let's talk about that a little bit.
9 You're aware that Suez -- that Lucasys was doing consulting
10 work for Suez in 2019 and 2020, correct?

11 A. They did.

12 Q. And are you aware of any communication by PowerPlan
13 to Suez in 2019 that concerned Lucasys?

14 A. I'm not aware of any written communication.

15 Q. Any verbal communication from in the record from
16 PowerPlan to Suez concerning Lucasys that was made in 2019?

17 A. I'd have to go back and review all the testimony.

18 Q. I'll represent to you that there is no evidence in
19 the record of any communication, written or verbal by PowerPlan
20 to Suez concerning Lucasys in 2019. So just assume that for
21 purposes of my question. Assuming that's accurate, is it still
22 your position that Suez would have been -- I'm sorry, would
23 have become a customer of Lucasys for deferred tax, Copilot,
24 and Nova in 2019, But-For PowerPlan's behavior?

25 MR. MAYES: Objection. Lack of foundation.

1 BY MR. FRIEDMAN: (Resuming)

2 Q. Still answer the question.

3 A. Yes, they actually became a customer in 2019. The
4 nature of these agreements, again, are very long term. The
5 implementation of these software products and the consulting
6 services take years.

7 Q. My question is whether or not they would have become
8 a customer of Lucasys for these products in 2019, But-For
9 PowerPlan's conduct if PowerPlan didn't have any communications
10 with Suez in 2019?

11 MR. MAYES: Objection. Lack of foundation. You can
12 answer if you can.

13 WITNESS: That's the assumption here, yes.

14 BY MR. FRIEDMAN: (Resuming)

15 Q. And I assume that footnote 6, that's a typo
16 depreciation should be Nova, right? Is that a typographical
17 error in your report?

18 A. Let's look. That should be Nova, yes.

19 Q. Let's also talk about the But-For consulting
20 customers. There's a reference to schedule 12, that there are
21 four consulting customers that presumably -- I assume you're
22 saying that those four would have been consulting customers
23 But-For PowerPlan's conduct in 2019?

24 A. No, those are all actual consulting customers.

25 Q. Why does line 5 say, "But-For Lucasys' consulting

1 customers" and there's a reference in 2019?

2 A. Well, that's why those in 2019, you see, those are
3 all distinguished by being in red.

4 Q. Okay. So there's no lost revenue from consulting
5 customers in 2019 in your damage model, correct?

6 A. Correct.

7 Q. And you use those four for the purpose of predicting
8 how many customers Lucasys would have had in future years,
9 But-For PowerPlan's conduct. Is that correct?

10 A. Correct. 2019 is the benchmark or baseline.

11 MR. MAYES: And I know we haven't been going for an
12 hour, but I need a comfort break.

13 MR. FRIEDMAN: Absolutely.

14 (Brief break taken)

15 BY MR. FRIEDMAN: (Resuming)

16 Q. Okay. Mr. Olsen, here's my understanding of big
17 picture of the damage model and want to make sure I have the
18 right understanding. So based upon the assumptions that we
19 just went over that are shown in schedule 10 footnotes, you
20 determined the number of But-For sales of the four products and
21 consulting services in 2019. I'm sorry. Schedule 10.

22 MR. MAYES: I'm sorry. Was that a question?

23 MR. FRIEDMAN: Yeah, just making sure I understand
24 the big picture.

25 BY MR. FRIEDMAN: (Resuming)

1 Q. You took on schedule 10, the 2019 column, and those
2 are the assumptions of the number of sales of the different
3 software products in 2019, correct?

4 A. Yes, 2019 serves as the baseline for the analysis.

5 Q. Good. So that's the baseline. And so then you took
6 that baseline and you compared it against information shown on
7 schedules 13, 14, 15, and 16 for the software products.

8 A. I took 10 and did what? Compared to 13 through 16.

9 Q. You took 10 and then you calculated a win rate, based
10 upon the number of opportunities to sell depreciation and
11 deferred tax products shown in 13, 14, 15, and 16.

12 A. Well, the win rate would just be based off 13 for the
13 software opportunities.

14 Q. Well, the win rate for 2019 is based upon the number
15 of But-For sales shown in schedule 10, divided into the
16 opportunities in schedule 13, right?

17 A. Yes. Just 13, but not 14, 15, and 16.

18 Q. Yeah, for 19, the other ones are for different years?

19 A. Right.

20 Q. Yeah. No, I'm sorry, I didn't mean to imply that.
21 Just for 2019, the win rate is schedule 10, divided into
22 schedule 13?

23 A. For software, yes. And then for consulting for
24 schedule 17.

25 Q. Got you. Those are the futures. That's why I

1 stopped with 16, because 17, 18, 19, 20 go into consulting
2 opportunities, right?

3 A. Correct.

4 Q. Okay. And that ratio, which you call a win rate is
5 important for your damage model, right?

6 A. It's one of the elements I use to forecast future
7 sales, yes.

8 Q. Yeah. And so, again, the denominator in that win
9 rate is based upon what we just went through in schedule 10.
10 And the numerator is based upon schedule 13, the opportunities?

11 A. I think you swapped denominator, but yes.

12 Q. I'm sorry, I'm a lawyer, not an accountant like you.
13 I get it. Okay. But those are the two elements of the ratio,
14 right. The one element is the assumptions that are made in
15 schedule 10 about the lost. Look at the exact words, "About
16 the inability to become a customer in 2019".

17 A. With you so far.

18 Q. Right. That's one of the elements. And then the
19 other element is the number of opportunities shown in schedule
20 13, correct?

21 A. For the baseline rate, I believe that's correct.

22 Q. Okay. And you then created by -- use that ratio, and
23 then you applied that ratio to the number of opportunities that
24 are shown in the future year schedules, correct?

25 A. Yes.

1 Q. And that's how you came up with the number of lost
2 sales in your model?

3 A. I said lost customers, yes.

4 Q. Good clarification, lost customers. Did you read Dr.
5 Tyler's report in this case?

6 A. Yes.

7 Q. Did you read the section in his report about
8 principles of damages analysis?

9 A. Yes.

10 Q. You don't describe any particular damages methodology
11 in your report, do you?

12 A. Well, I describe the general calculation for lost
13 profits, which involves forecasting actual revenues --
14 forecasting But-For revenues subtracting actual revenues to get
15 lost revenues. Yes, I do.

16 Q. So that's your methodology, right?

17 A. Yes.

18 Q. And you don't cite any treatises for the
19 appropriateness of that methodology in antitrust case, do you?

20 A. For lost profits, I cite the AICPA manual on
21 calculating lost profits. I do.

22 Q. Does that relate to antitrust cases?

23 A. I'd have to go back and look at it to see if it
24 covers that. I would assume so.

25 Q. Okay. Essentially, you're measuring harm by

1 comparing a But-For world and natural world?

2 A. Yes.

3 Q. And again, your actual world is based upon the
4 assumptions in those footnotes in schedule 10, correct?

5 A. The actual world is based off those footnotes in 10,
6 as well as the actual revenues earned for the customers that
7 Lucasys actually made.

8 Q. Okay. But in terms of lost customers, it's based
9 upon the assumptions in those footnotes on schedule 10,
10 correct?

11 A. Yes, as informed by the rest of the record as well.

12 Q. So you would agree that assessing damages for startup
13 companies has greater challenges than doing so for established
14 companies, correct?

15 A. It certainly can.

16 Q. Would you consider your model a yardstick approach?

17 A. No, I would consider it more a before after approach.

18 Q. Would you consider it would be a forecast model?

19 A. There are certainly elements in forecasting in this
20 model as I'm forecasting revenues for a number of years
21 forward.

22 Q. But it's primarily a before and after model, right?

23 A. I believe that's a fair characterization.

24 Q. And you didn't do a lost enterprise value approach
25 like Mr. Tyler suggested, do you?

1 A. Well, I don't know that he suggested that was
2 appropriate for this case. He mentioned that's just one of the
3 possibilities.

4 Q. Okay. And you didn't consider that?

5 A. No.

6 Q. You didn't interview any of the customers that are
7 referenced in that 2019 column in the footnotes in schedule 10,
8 correct?

9 A. No, I did not interview any customers.

10 Q. You're not aware of any affidavits that any of those
11 customers signed, correct?

12 A. I'm just aware of their deposition testimony from
13 those customers.

14 Q. You're not aware of any particular emails from those
15 customers to either Lucasys or PowerPlan, are you?

16 A. I believe there are a number of emails from those
17 customers to Lucasys and PowerPlan in the record, yes.

18 Q. But none of those were mentioned in your report,
19 correct?

20 MR. MAYES: Objection.

21 WITNESS: A number of them are cited -- I've reviewed
22 and are cited in the Appendix B of my report.

23 BY MR. FRIEDMAN: (Resuming)

24 Q. Okay.

25 A. And I should also clarify there a number of those

1 communications are attached as deposition exhibits to many of
2 the depositions.

3 Q. Other than as you've referenced, reading the
4 materials that are cited in your report, what did you do to
5 investigate the appropriateness of the assumption that you made
6 in footnotes 3, 4, 5, 6 -- 3, 4, 5, and 6 of Schedule 10?

7 A. Other than my review of the entire record, many of
8 the documents we've just been discussing, as well as
9 discussions with Mr. Lantukh, Mr. String, all of this
10 information is informed. The reasonable -- it convinced me
11 that those assumptions were reasonable.

12 Q. You agree that there was risk inherent in Lucasys
13 trying to develop a product in 2019, right?

14 A. Yes, there's risk.

15 Q. And to the extent the products were still in
16 development, you don't know how that risk would have played out
17 going forward, right?

18 A. Specifically, no, thought. That's informed by my
19 understanding that since that time all those products have been
20 developed.

21 Q. Have any of those products been implemented by a
22 customer since that time, to your knowledge?

23 A. To my knowledge, because of the actions of PowerPlan
24 that Lucasys has been unable to implement any of those software
25 solutions.

1 Q. Did you take the development risk into account in
2 formulating your damages model?

3 A. Sorry, can I back up one and add to the last
4 question?

5 Q. Of course. Yes, please.

6 A. I understand Copilot - Lucasys has started to
7 implement that at AEP.

8 Q. Lucasys is implementing Copilot at AEP. Is the loss
9 of the opportunity to sell Copilot at AEP part of your damages
10 model?

11 A. Yes.

12 Q. And so if Lucasys is now implementing Copilot, AEP
13 and presumably being compensated for it, is that double
14 counting in your damages model?

15 A. No. Because to whatever extent they are now
16 receiving revenue, that would be backed out in the actual
17 revenue. That would be including the actual revenue that I'm
18 subtracting from the forecasted revenue in my model.

19 Q. But you haven't done that yet in your model?

20 A. Yes, I have.

21 Q. You've backed out payments to Lucasys going forward
22 for licensing Copilot?

23 A. I've backed out estimates of future revenue, which
24 would include Copilot from AEP, yes.

25 Q. Okay. What if AEP were to implement another one of

1 the software products this year? Would your damage model have
2 to be adjusted to account for that?

3 A. No, because again, I'm forecasting whatever revenue
4 Lucasys is expecting in 2023. Right now, they're not expecting
5 any revenue from -- for deferred tax and depreciation from AEP
6 because AEP chose a different solution and is not currently in
7 the market for those products.

8 Q. Well, take another customer. Any of the customers on
9 -- let's take a customer on Schedule 15. Let's look at
10 Schedule 15. So, for instance, customer number 11, Tampa
11 Electric, TECO.

12 A. Okay.

13 Q. If TECO were to purchase and implement one of the
14 software products, either depreciation or deferred tax product
15 in 2023 from Lucasys, would that affect your damages model?

16 A. Not necessarily.

17 Q. Explain why not?

18 A. For a couple of reasons. One, I'm not specifically
19 forecasting individual opportunities. I'm not saying that
20 Tampa Electric would have purchased in the actual or But-For
21 world. And two, that seems highly unlikely that any of these
22 customers are actually going -- there's no plans right now that
23 I'm aware of from Lucasys that Tampa Electric or any of these
24 companies are currently considering deferred tax or any product
25 in the Lucasys slate because of the stigma that exists in the

1 market right now.

2 Q. The stigma that exists in the market right now. What
3 is that stigma?

4 A. That there is an understanding in the market that
5 Lucasys is off limits because of PowerPlan.

6 Q. And what do you base that on?

7 A. My review of the record.

8 Q. What specifically in the record as you sit here
9 today, can you base that statement on?

10 A. Deposition testimony from Lucasys' employees,
11 deposition testimony of the customers in this case.

12 Q. Give me a particular customer deposition in this case
13 that supports that statement?

14 A. The representative from Liberty?

15 Q. Representative from Liberty supports the statement
16 that there's a stigma in the marketplace for the purchase of
17 depreciation or deferred tax products from Lucasys. Is that
18 your testimony?

19 A. Not in those exact words, but yes.

20 Q. Okay. The record will speak for itself. Okay.
21 Let's look at paragraph 30 of your report. By the way, is
22 Liberty an opportunity for depreciation of deferred tax
23 products, according to your report?

24 A. No, they were one of the consulting customers.

25 Q. Paragraph 30, third sentence says, "In addition, I'm

1 aware of proposals to at least 15 additional IOUs by Lucasys
2 for both software products and consulting services". Do you
3 see that sentence?

4 A. I do.

5 Q. There's no reference, there's no footnotes to that
6 sentence. Are you referring to verbal written? What is that
7 in reference to?

8 A. These are written proposals.

9 Q. And you don't cite them in your report?

10 A. They're included in Appendix B.

11 Q. Okay. And all 15 of those are written proposals?

12 A. I reviewed documents, so that I would consider that
13 written, yes.

14 Q. Okay. Are you aware of any responses from customers
15 to these 15 written proposals from Lucasys?

16 A. What I'm aware of is, that none of them were willing
17 to go forward because of fears of PowerPlan.

18 Q. And that's based upon statements by those customers?

19 A. That's based off my understanding from discussions
20 with Mr. Lantukh.

21 Q. Yeah, from Mr. Lantukh. You're not aware of any
22 written communications or verbal communications from a customer
23 that they were unwilling to go forward with Lucasys because of
24 PowerPlan's behavior, are you?

25 A. Let's see. Well, we discussed the Liberty one. That

1 was a proposal and that was actually an agreement. There was
2 -- I thought I saw a communication from Suez. I know I heard
3 of a communication from Suez about whether or not they could
4 continue to -- whether or not they can use Lucasys now or not
5 and thought that they couldn't --

6 Q. So you're --

7 A. I can tell you Bates numbers --

8 Q. I didn't mean to interrupt you. So you read Suez's
9 30(b)(6) deposition, right?

10 A. Yes.

11 Q. And you're aware of the fact that Suez continued to
12 use Lucasys for services after it was contacted by PowerPlan in
13 2020, correct?

14 A. I'm aware that they finished up some work that was in
15 process at the time and since then that the workflow has
16 stopped.

17 Q. And are you aware that Suez's corporate
18 representative said that the decision -- strike that. Are you
19 aware that Suez's corporate representative said that
20 PowerPlan's behavior has not affected Suez's decision to
21 continue to engage Lucasys?

22 MR. MAYES: Objection. Mischaracterizes the
23 testimony.

24 WITNESS: I believe I'm aware of the testimony of
25 which you speak, but that's contradicted by a number of things.

1 Including; the fact that there have been no further
2 opportunities. And two, that I understand that a
3 representative from Suez reached out to Lucasys asking to use
4 one of Lucasys' contractors because they couldn't use Lucasys
5 directly.

6 BY MR. FRIEDMAN: (Resuming)

7 Q. Okay. All right. So then you cite two examples of
8 the 15 (unintelligible). Are these two examples part of the 15
9 that you're referring to in paragraph 30?

10 A. Yes, I believe so. Okay.

11 Q. [REDACTED]

12 A. Yes.

13 Q. Are either of those opportunities on one of your
14 schedules?

15 A. You mean on schedule 10?

16 Q. No, schedules from not schedule 10, opportunities
17 from the Salesforce data. The schedules that we talked about
18 the numbers 13, 14, 15, 16.

19 A. I'm not sure. I'd have to go back and look.

20 Q. Okay.

21 A. And sometimes the way PowerPlan refers to a company
22 by name -- is not the same way that Lucasys refers to them.

23 Q. But you could figure that out by looking at the
24 source document. Right. The big spreadsheet that's a
25 PowerPlan cited as footnote 1 in schedule -- I guess it's all

1 their schedules. It would be schedule 13.

2 A. I could, just not as I sit here, for example --

3 Q. You just don't know off the top of your head?

4 A. Off the top of my head, for example; and the --

5 Lucasys refers to Suez as Suez versus PowerPlan refers to it as
6 Viola Water. So theres --

7 Q. But Viola (unintelligible)

8 A. Right.

9 Q. So back in 2019, it was Suez. Now a new company owns
10 it, right. But we could figure that out by looking at that
11 document, right?

12 A. Right. But there might be an additional step of
13 trying to figure out if there's different subdivisions for
14 subsidiaries.

15 Q. And you would agree the document speaks for itself.
16 If [REDACTED] and none of its parents or
17 subsidiaries is on that document, then it wouldn't be in your
18 schedule, correct?

19 A. It wouldn't be in the opportunities based off of the
20 Salesforce database. That could be correct.

21 Q. Yeah. Well, that's exactly what I was getting at.
22 Thank you. I see you have two footnotes 36, and 37. Why don't
23 we go ahead and take a quick look at those documents?

24 MR. MAYES: Which one's, which?

25 MR. FRIEDMAN: 5 is 1, 4, 9, 3, 4, 5.

1 MR. MAYES: Thank you.

2 MR. FRIEDMAN: And 6 is the other one. Give me a
3 second, get my page organized.

4 BY MR. FRIEDMAN: (Resuming)

5 Q. So footnote 36 relates to [REDACTED], correct?

6 A. Yes, I believe so.

7 Q. And are you aware of any follow up to this email from
8 Mr. Lantukh?

9 (Defendant's Exhibit No. Olsen 5 marked and identified)

10 A. I don't recall as we sit here.

11 Q. Okay. You don't recall any response from [REDACTED]?

12 A. I don't.

13 Q. All right. Now let's take a look at Exhibit 6. The
14 same thing for [REDACTED]. Do you have any response from
15 [REDACTED] to Lucasys?

16 (Defendant's Exhibit No. Olsen 6 marked and identified.)

17 A. No.

18 Q. Did Mr. Lantukh tell you anything about either one of
19 these customers response to his emails? As you can best of
20 your recollection?

21 (Defendant's Exhibit No. Olsen 7 marked and identified)

22 A. He may have. I just don't recall specifically.

23 Q. And you didn't attempt to interview either one of
24 these customers, did you?

25 A. No.

1 Q. Mr. Olsen, let's go back to paragraph 14. Something
2 I missed.

3 MR. MAYES: You said paragraph 14?

4 MR. FRIEDMAN: Yeah, paragraph 14 of your report.

5 BY MR. FRIEDMAN: (Resuming)

6 Q. Sorry. We had talked about this paragraph before and
7 I missed the issue that I wanted to follow up on. In the
8 second sentence, in a statement "To service these customers,
9 Lucasys offers consulting services to address gaps existing
10 between the needs of the IOUs and currently available fixed
11 asset tax offer". Do you see that sentence?

12 A. I do.

13 Q. What gaps are you referring to?

14 A. As I understand that the state of the PowerTax
15 software suite wasn't addressing all the needs of customers and
16 that's the reason why entire sub industry has arisen of
17 consulting for tax based consulting for IOUs by companies like
18 RCC and others.

19 Q. Does Lucasys deferred tax product address every gap
20 that's described in paragraph 14?

21 A. I have no opinion on whether the Lucasys product
22 addresses gaps or not.

23 Q. Okay. So you don't know if there's any difference
24 between PowerTax's products and Lucasys' products with regard
25 to the gaps existing that you're referring to in paragraph 14,

1 right?

2 A. Right, I am not. Although, I do understand that
3 Copilot has one of the -- Lucasys' selling points for Copilot
4 is that it will reduce the need for future consulting services.

5 Q. But Copilot is compatible with PowerTax, right?

6 A. That's my general understanding.

7 Q. It's not a substitute, unlike deferred tax and
8 depreciation, right?

9 A. For certain modules of PowerTax, right.

10 Q. Yeah, deferred tax and depreciation. I'm sorry. Tax
11 depreciation. Got the words about backwards, as described in
12 paragraph 14. You're understanding that those are substitute
13 for certain modules provided by PowerTax, right?

14 A. Generally, yes.

15 Q. But that Copilot and Nova are (unintelligible),
16 correct?

17 A. That might be fair. I know they each address certain
18 issues. Whether how neatly those pieces fit into the overall
19 puzzle that I couldn't offer an opinion on.

20 Q. You mentioned customer Liberty before. And Liberty
21 terminated a consulting agreement with Lucasys, correct?

22 A. Yes.

23 Q. And do you know who performed those consulting
24 services for Liberty?

25 A. I do not.

1 Q. Do you know of any other customer that terminated
2 consulting services with Lucasys, due to PowerPlan's alleged
3 behavior?

4 A. I believe part of the services canceled by NextEra or
5 Florida Power & Light also included -- I think one was Copilot
6 that was also including consulting services that were later
7 done by PowerPlan.

8 Q. Okay. So Liberty and FPL are the two examples that
9 you're aware of of customers that terminated consulting
10 services with Lucasys allegedly based upon PowerPlan's conduct,
11 correct?

12 A. Those are two specific examples I'm aware of, yes.

13 Q. So you're not aware of any others, right?

14 A. That went from actual contracts, canceled, It's just
15 those two that I'm aware of. I know AEP and Suez had
16 consulting services as well, that were restructured rather than
17 canceled.

18 Q. Mr. Olsen, what is your definition of the win rate as
19 portrayed in your report?

20 A. It's the ratio of the number of customers converted
21 by Lucasys compared to the number of opportunities generally
22 available in any given year.

23 Q. And again, make sure I get this right. The
24 denominator for the win rate is the opportunity shown in
25 Schedule 13 for 2019?

1 A. For the baseline rate, yes.

2 Q. Yeah. And the numerator is the assumed lost sales
3 shown in schedule 10 for 2019?

4 A. Yeah. The number of customers indicated in 2019 on
5 schedule 10, category by category.

6 Q. And it's just three customers AEP, Suez, and FPL,
7 correct?

8 A. For software?

9 Q. I'm sorry.

10 A. Yes.

11 Q. You got me, 100 percent. I need to be more specific
12 for software. Thank you, sir. Because I was thinking
13 software, and I didn't make the differentiation. For software
14 only, it's just the three customers AEP, Suez, and FPL. And
15 then you can look at Schedule 10. Let's make sure we're all on
16 the same page. Footnotes schedule 10.

17 A. That is correct.

18 Q. And then, I mean, to be fair, for consulting
19 customers, it's not any assumption, it's the actual customers?

20 A. Right.

21 Q. Yeah. Okay, so make sure again, that's the numerator
22 and the denominator is the information you've got on Schedule
23 13 that you pulled from the Salesforce, right?

24 A. Yes.

25 Q. And the three customers in the numerator, AEP, Suez,

1 and FPL, only AEP is also shown on Schedule 13, correct?

2 A. Of those three, yes.

3 Q. Okay. Let's talk a little bit about how -- let's
4 talk a little bit about how you compiled Schedule 13, okay?

5 A. Sure.

6 Q. And I'm not going to bring it up because it's an
7 unwieldy document, but I will give you a -- hopefully, I'll
8 give you a Bate stamp number. Well, you've got it on there.
9 You took as the source, since footnote 1 on Schedule 13. A
10 PowerPlan document. And it's PowerPlan 01945177, correct?

11 A. Yes.

12 Q. That's a (unintelligible) spreadsheet, right?

13 A. Yes.

14 Q. And what is your understanding of what that
15 spreadsheet entails? What does it show?

16 A. My understanding is that it's an export from a
17 Salesforce database used by PowerPlan in the normal course of
18 business.

19 Q. And did you interview anyone who compiled that
20 information?

21 A. At PowerPlan?

22 Q. I assume you agree with me that that information was
23 compiled only by PowerPlan, right?

24 A. I do agree.

25 Q. And did you interview anybody at PowerPlan to

1 understand how they compiled that data?

2 A. No. I reviewed deposition testimony of
3 representatives from PowerPlan who were knowledgeable about
4 that database.

5 Q. And who are those witnesses? Mr. Cry is one of them,
6 right?

7 A. One of them. But there's also another lady that her
8 name escapes me.

9 MR. MAYES: It was either Jennifer Butts or Allison
10 McGuffy.

11 MR. FRIEDMAN: It's Allison McGuffy.

12 WITNESS: That's the one.

13 BY MR. FRIEDMAN: (Resuming)

14 Q. Okay. But Ms. McGuffy, she didn't actually input any
15 data into that, did she?

16 A. I don't recall. I believe she testified on how that
17 database was used by PowerPlan.

18 Q. Okay. And Mr. Cry (ph) was the vice president of
19 sales back in 2019, correct?

20 A. I don't recall his title.

21 Q. You have no reason to question the proposition that
22 Mr. Cry would have been the individual at PowerPlan during this
23 time period who is most familiar with those documents in the
24 Salesforce?

25 A. I have no reason to disagree with that.

1 Q. And you read Mr. Cry's deposition?

2 A. I don't recall that I personally did, someone from my
3 staff probably did.

4 Q. Are you aware of what PowerPlan describes as a phase
5 two opportunity in the Salesforce data?

6 A. I am familiar with the phase two concept based off of
7 the Tyler report.

8 Q. Okay. He didn't go back and meet Mr. Cry's
9 deposition to see how he describes what a phase two opportunity
10 is?

11 A. No, I accepted Tyler's definition of that phase two.

12 Q. Other than those depositions, what did you do to
13 understand how PowerPlan compiles the data in the Salesforce
14 data?

15 A. Other than the depositions, nothing.

16 Q. Okay.

17 A. I assumed the information was accurate and that was a
18 reasonable assumption based on that, PowerPlan uses the
19 database to conduct its business.

20 Q. And so how did you pick from the Salesforce database
21 this document that's referenced in footnote 1, how did you pick
22 for 2019 these 20 customers?

23 A. Well, these are every customer identified by
24 PowerPlan as having either an opportunity for PowerTax --
25 deferred tax, or PowerTax depreciation within the year of 2019.

1 Q. What do you mean when you say "An opportunity for
2 deferred tax or depreciation"? The licensing of new software,
3 Is that what you mean by that?

4 A. What I mean is that within the Salesforce database,
5 the PowerPlan is identifying which products are the perceived
6 opportunity for the customer. And PowerPlan specifically
7 listed whether PowerTax depreciation or PowerTax deferred tax
8 was one of the products that could be sold to that customer.

9 Q. Okay. So your understanding is that these 20
10 customers are customers who have been designated by PowerPlan
11 in 2019 as customers that either tax depreciation or deferred
12 tax products could be sold to in that year?

13 A. According to their database, yes.

14 Q. But that's your understanding of what you pulled out,
15 right?

16 A. Yes.

17 Q. Okay. And so what did you do to test that? What did
18 you do to test that assumption that the customers that you were
19 pulling out were actually customers that PowerPlan believed
20 were an opportunity to purchase depreciation or deferred tax,
21 products in 2019?

22 A. I assumed the document was accurate. I didn't see a
23 need to test it.

24 Q. Okay. So the document doesn't say that these are
25 customers that the sale or licensing of software is an

1 opportunity in 2019, does it? Does it actually say that?

2 A. I'd have to see the document to be sure. But my
3 understanding of it, is PowerPlan is identifying different
4 customers to which it could sell its products and included,
5 product by product, which products it thinks it could sell.
6 And I'm just simply summarizing that.

7 Q. Okay. So for instance, if a particular customer that
8 you have on Schedule 13 has a reference in the Salesforce data
9 to a PPE uplift for one of these products. Do you consider
10 that to be an opportunity to sell new software to that
11 customer?

12 A. Only if PowerPlan included as a product PowerTax --
13 deferred tax or PowerTax depreciation.

14 Q. Got you. So if there's a reference to one of those
15 two products, even if it doesn't say it's a sale of a new
16 software, you put it in that schedule?

17 A. Correct.

18 Q. Okay. And so, again, do you know what a PPE uplift
19 is in the Salesforce data? What that's a reference to?

20 A. Specifically, no. There is a number of products
21 beyond just deferred tax and depreciation listed for these
22 customers.

23 Q. So what if it's a PPE uplift for depreciation
24 software? You took that to be a reference of a new sale of
25 depreciation software, right?

1 A. I didn't necessarily consider that a new sale. I
2 considered that an opportunity for that customer is interested
3 in that software product.

4 Q. So if a customer is interested in a software product,
5 even if it's -- strike that. If a customer is interested in a
6 software product because it wanted -- we don't need to --
7 that's fine. Okay. Strike that. We'll go on. How about a
8 standard maintenance renewal for depreciation tax software? Is
9 that an opportunity in your mind?

10 A. Potentially. So, again, I'm just summarizing,
11 anytime that PowerPlan saw an opportunity related to those two
12 software products.

13 Q. Got you. Even if it's not related to the purchase of
14 new software, correct?

15 A. The purchase of new software is not a prerequisite
16 for my consideration of the opportunities.

17 Q. Got you. So an opportunity for a standard
18 maintenance renewal, to you, that's an opportunity to sell new
19 software?

20 A. That could be.

21 Q. Okay. And what did you do to test that assumption?

22 A. That -- again, the document speaks for itself. I saw
23 no need to test beyond assuming the document was accurate.

24 Q. No, that's not my question, sir. You're avoiding the
25 question. Let me ask it again. If there's an entry in the

1 Salesforce database for deferred tax product. And the entry is
2 standard maintenance renewal. You took that to be a software
3 opportunity that includes depreciation on tax deferred
4 products, right?

5 A. That would be included as an opportunity in my
6 analysis, yes.

7 Q. Okay. And the purpose of schedule 13, is customers
8 that there's an opportunity to sell new tax depreciation or
9 deferred tax products to, correct?

10 A. Yes.

11 Q. Lucasys wasn't selling standard maintenance renewal
12 for PowerTax, was it?

13 A. Lucasys was not, no.

14 Q. No, they're selling new tax software as listed in
15 paragraph 14 of your report, right?

16 A. Paragraph 14 does list the four different software
17 products that I'm concerned that would be sold by Lucasys.

18 Q. That's right. And so you took the Salesforce
19 database, and anytime there's a mention of depreciation or
20 deferred tax products in a line in that database, you took it
21 to be an opportunity for Lucasys to sell new product to,
22 correct?

23 A. Yes.

24 Q. And that's true even if the opportunity mentions one
25 of those softwares, but it has nothing to do with the purchase

1 of new software, correct?

2 A. Correct. It could be a renewal.

3 Q. Yeah. You didn't test well, not just a renewal
4 software renewal, just maintenance agreement for the software.
5 You didn't do anything to test whether or not the reference to
6 one of these products in the Salesforce database was an
7 opportunity that PowerPlan saw to sell any new tax software,
8 correct?

9 A. Correct. I didn't see the reason to test that.

10 Q. You don't think that would be important to
11 determining whether or not it truly is an opportunity that
12 includes depreciation or deferred tax products? An opportunity
13 for Lucasys we're talking about, right?

14 A. Correct.

15 Q. Great. What about a reference in the Salesforce
16 database to a customer who is divesting itself of assets and
17 needs consulting services to separate the data in its deferred
18 tax or depreciation software? Is that an opportunity for
19 Lucasys to sell new software to?

20 A. If the customer needed consulting services. My
21 understanding is that would show up in the database as a PS
22 PowerTax product and I would have included it as a consulting
23 opportunity.

24 Q. You're able to determine on the Salesforce database
25 from reading the lines whether it's consulting or new software?

1 A. Whether it's a software or consultant, yes.

2 Q. So if I told you, assume that there is a line that
3 one of your customers in one of your schedules was divesting
4 assets and needed consulting services to do so for either
5 deferred tax or tax depreciation, but is in the schedule, would
6 that be a mistake? Shouldn't be in the schedule then?

7 MR. MAYES: Objection. Lack of foundation. If you
8 understand, you can answer.

9 WITNESS: As I understand it, if the customer need
10 consulting opportunities, then PowerPlan would have identified
11 it as such and I would have included it as such.

12 BY MR. FRIEDMAN: (Resuming)

13 Q. Okay. And so if there's a line that -- I'm not going
14 to pull up the whole thing. But one of your customers in
15 schedule for Schedule 15 is Dominion. And if there's a line in
16 that entry that says "Dominion approach PowerPlan to provide
17 services to SWG at no cost". And the services relate to either
18 depreciation deferred tax, should that have been included in
19 Schedule 15?

20 A. If PowerPlan identified it as a software opportunity,
21 then yes.

22 Q. How did you determine that it's a software
23 opportunity that's being identified by PowerPlan?

24 MR. MAYES: Objection. Asked and answered.

25 WITNESS: The way it was identified in the database

1 to be a software opportunity versus a consulting opportunity
2 was the designation of PS before PowerTax, which I understood
3 PS to stand for Professional Services.

4 BY MR. FRIEDMAN: (Resuming)

5 Q. Okay. But you did nothing to test of any one of
6 these -- your interpretation of any one of these customers
7 listed on your schedules, in fact, was thought of by PowerPlan
8 as an opportunity to sell software either depreciation or
9 deferred tax software to that customer, did you?

10 MR. MAYES: Objection. Mischaracterizes testimony.
11 You can answer if you understand.

12 WITNESS: No. I didn't see that a reason to do so.

13 BY MR. FRIEDMAN: (Resuming)

14 Q. Okay. You'd agree with me that the individuals at
15 PowerPlan that inputted the data would know better than anyone
16 else as to whether or not they were referring to an opportunity
17 to sell new software, correct?

18 A. That might be accurate. That's not necessarily how I
19 used it, but okay.

20 Q. Well, it's not necessarily how you used it. Let's
21 back up then. Because my understanding is, and we went over
22 this, that you compiled schedule 13, 14, 15, and 16 with the
23 understanding, based upon your review of the Salesforce data,
24 that the customers listed were thought of by PowerPlan as
25 opportunities to sell new software -- depreciation deferred tax

1 software products in that year.

2 MR. MAYES: Objection. Mischaracterizes his
3 testimony.

4 WITNESS: No.

5 BY MR. FRIEDMAN: (Resuming)

6 Q. Explain to me what I just said that's not correct?

7 A. I haven't assumed that these are opportunities for
8 PowerPlan to sell new software.

9 Q. What is your assumption then?

10 A. My assumption is these are customers that are
11 interested in the two specific software products that Lucasys
12 is selling.

13 Q. So they have some level of interest. You don't know
14 what that level is though, do you?

15 A. That PowerPlan knows the level of that interest.
16 PowerPlan identified these opportunities, not me.

17 Q. Right, so you don't know. You just assume that then,
18 right? That's an assumption of your model, isn't it? What you
19 just said.

20 A. I'm assuming their Salesforce database is accurate.
21 I've used it in a way I've explained. And I know PowerPlan
22 uses it in the normal course of business, therefore I felt it
23 was reasonable to use.

24 Q. Do you know if any of the customers listed in these
25 schedules actually purchased software from PowerPlan, in the

1 years in question?

2 A. I believe the Salesforce database does have some
3 indication of follow up on these opportunities. I'd have to go
4 back and look to see to what extent.

5 Q. Would it affect your opinion at all if fewer than 5
6 percent of the customers listed in your schedules actually
7 purchase software from anybody in these time periods?

8 A. No.

9 Q. Why not?

10 A. I don't see how it would.

11 Q. Well, doesn't that tell you that they weren't really
12 opportunities for the purchase of new software if they didn't
13 buy it from anybody? Isn't that logical, sir?

14 A. No.

15 Q. Explain to me why -- what's the fallacy of that -- my
16 last statement?

17 A. A number of things. One, most of these customers had
18 already purchased many of these software products. Two, there
19 is no other available software product on the market. So it's
20 not as if they weren't purchasing from PowerPlan, they had some
21 other option. There were no other options.

22 Q. So your assumption is that if there's some mention in
23 the Salesforce data about these customers, then they were
24 opportunities for Lucasys to sell and replace PowerPlan. Is
25 that the assumption?

1 A. For certain aspects of PowerTax that modules were
2 discussing and the other software products that Lucasys offers,
3 yes.

4 Q. Okay. And you did nothing to verify whether any of
5 these customers, in fact, were interested in purchasing new
6 software?

7 A. Well, I know many of the customers were dissatisfied
8 with PowerPlan's software according to the Stack's report.

9 Q. Did you compare a single one of these customers to a
10 comment on the Stack's report?

11 A. No, I didn't see a reason to do so.

12 Q. You don't know of a single customer listed on one of
13 your schedules that there is an entry in any of the Stack's
14 reports, do you?

15 A. Can I get that question again?

16 Q. You cannot identify a single customer listed on
17 Schedule 13, 14, 15, or 16 that had a negative comment about
18 PowerTax or tax depreciation in the Stack's report, can you?

19 A. A specific customer, no. But the fact that there's
20 only so many of these customers in the IOU market and the fact
21 that many of them were identified by Stack's as being
22 dissatisfied, it's reasonable to assume that some of those
23 were.

24 Q. Can you even refer to a single entry in the Stack's
25 reports that specifically relates to these two products as

1 opposed to PowerPlan's overall suite of services and tax
2 software? You can't, can you?

3 A. I just mentioned that I am unable to go through any
4 specific customer, but logically they must be.

5 Q. The Stack's report will speak for itself. So we can
6 look at that and see if there's any specific reference. Okay.
7 If I go back to Schedule 13, there's a column for whether or
8 not the customer received a letter. Do you see that?

9 A. I do.

10 Q. Okay. Now, for the 2019 analysis, is it your
11 testimony that the customers where there's a yes in that column
12 received a letter from PowerPlan in 2019?

13 A. In 2019? No, that's not (unintelligible) .

14 Q. What is that reference then? What is that a
15 reference to then? Why is this column in 2019 schedule?

16 A. Because at some point they received a letter. I'm
17 not giving an opinion that they received a letter in 2019.

18 Q. Okay. I'll tell you. The letters went out in 2020?

19 A. Correct.

20 Q. And so some of these customers are identified as
21 having received a letter from PowerPlan and some as not having
22 received a letter from PowerPlan, right?

23 A. Yes.

24 Q. And it's about 25 percent in Schedule 13 and 58
25 percent in Schedule 14 and 48 percent in Schedule 15. And my

1 eyes aren't so good. I think it's 48 percent in Schedule 16.

2 But the print is small --

3 A. Right.

4 Q. Is that accurate?

5 A. Looks like it.

6 Q. So basically half give or take, right?

7 A. Right.

8 Q. And so for the customers that did not receive a
9 letter, do you know whether or not those customers even knew
10 about PowerPlan's allegations that Lucasys -- sorry, strike
11 that. For the entities that did not receive a letter, do you
12 have any evidence that they even knew about any controversy
13 between PowerPlan and Lucasys?

14 A. My understanding is the market is very small. These
15 companies talked to each other, and even companies that did not
16 receive a letter were aware of the issues between PowerPlan and
17 Lucasys.

18 Q. And that's another assumption on your part, right?

19 A. That's my understanding based off conversations with
20 Mr. Lantukh.

21 Q. Okay. Just Mr. Lantukh. There's no other source for
22 that, correct?

23 A. I'm trying to recall. I believe there's testimony in
24 the record on that as well. Deposition testimony.

25 Q. You're not aware of a statement in the record from

1 any of these customers other than AEP in the case of Schedule
2 13, regarding their knowledge of any controversy between
3 PowerPlan and Lucasys, correct?

4 A. Any statements from customers other than AEP?

5 Q. Yeah.

6 A. I'm not aware of any specific statements.

7 Q. And again, you assumed that all of these customers
8 had knowledge of the controversy between Lucasys and PowerPlan.
9 And you also assume that none of them purchased software from
10 Lucasys because of PowerPlan's conduct, correct?

11 MR. MAYES: Objection. Compound.

12 WITNESS: I'm assuming that the dispute between
13 PowerPlan and Lucasys is generally known in the industry.

14 BY MR. FRIEDMAN: (Resuming)

15 Q. And you also are assuming that some percentage of
16 these customers, I understand, supplied by the win rate, not an
17 individual customer. But some percentage of these customers
18 did not do business with Lucasys because of the alleged conduct
19 of PowerPlan, correct?

20 A. Correct. That's my model.

21 Q. Yeah. That's an assumption of the model. Yeah.
22 Now, for Copilot and Nova, there's nothing in the Salesforce
23 data about those products, right?

24 A. Correct.

25 Q. And so another assumption of your model is that the

1 customers on Schedules 13, 14, 15, 16 would have purchased that
2 product from Lucasys at the same rate at which they purchased
3 the other two products?

4 A. Not exactly.

5 Q. I'm not sure I got that. Explain that to me, please.
6 Yeah.

7 A. So the win rates for Nova and Copilot are calculated
8 as a derivative of the win rates for deferred tax and
9 depreciation.

10 Q. Got you. So the denominator is the same, but the
11 numerator is different?

12 A. Both are different.

13 Q. How's the denominator different? Didn't you just
14 take the same schedule -- the same customers off the schedule?

15 A. That's the denominator for deferred tax and for
16 depreciation. The denominator then becomes the number of
17 instances of deferred tax and depreciation in 2019, and the
18 numerator becomes the number of instances of Copilot and Nova.

19 Q. So the numerator is different. But I missed -- why
20 is the denominator different between the win rates for the
21 deferred and depreciation on one hand, and the Nova and the
22 Copilot on the other hand?

23 A. Because what I'm assuming is that the Lucasys is
24 experienced with selling Nova and Copilot to customers that
25 were also buying either deferred tax or depreciation or both

1 would be the same going forward. And so, for example, if we
2 just use an example, Nova, there was one instance of Nova in
3 2019, and --

4 Q. And that's Suez, right?

5 A. That's Suez. And combined, there were, I believe,
6 three instances of deferred tax and depreciation total. And so
7 the win rates then calculated, one divided by three going
8 forward. And so I look at 2020, I'm forecasting two customers
9 for deferred tax and one customer for depreciation, which
10 happens to be the same as 2019. And I forecast one instance of
11 Nova based on the same ratio of Nova to deferred tax and
12 depreciation in 2019.

13 Q. Got it. So it does follow the same potential
14 customers, but the success rate is lower because it's based
15 upon the success rate of the combined products?

16 A. Well, actually, the success rate looks like it's
17 higher because it's one divided by three, which is 33 percent,
18 but I think you got I got it the gist of it.

19 Q. So that's another assumption of the model, right?

20 A. That Nova and Copilot would be sold to the same
21 customers as deferred, tax and depreciation, yes.

22 Q. Yeah. You didn't interview any customers to ask them
23 about their purchasing preferences and the combination or
24 anything like that? That's an assumption that based upon what
25 Mr. Lantukh has told you.

1 A. Well, not just what he told me, but based on what --
2 based on the proposal history of the company.

3 Q. Okay. So those are the proposals back in 2019. But
4 those weren't actual sales of Copilot or Nova, right? Those
5 are just proposals, right? We talked about that before.

6 A. Those were based off the proposals after Lucasys had
7 entered into agreements with these companies, yes.

8 Q. Yeah, but the agreements were not specifically for
9 the sale of Copilot or Nova. They were services agreements
10 that could lead to the sale of those products, right. Is that
11 my understanding, correct for 2019?

12 A. My understanding at the time they entered the master
13 services agreements with Suez and AEP, for example, that they
14 were certainly contemplating the sale of all those products,
15 yes.

16 Q. But again, contemplating is not closing a sale,
17 right? When you use the word "contemplating", you don't mean
18 to actually close the sale for that license?

19 A. I would say the sale was in process.

20 Q. And that's based upon Mr. Lantukh's testimony? It's
21 not based upon the depositions, right? Of the customers?

22 A. It's based off the entire record.

23 MR. FRIEDMAN: Actually, I want to take another
24 break.

25 (Brief break taken.)

1 BY MR. FRIEDMAN: (Resuming)

2 Q. Mr. Olsen, we had earlier talked about the idea of
3 the phase two opportunity, remember that?

4 A. I recall.

5 Q. And I don't think I asked you, had you heard of that
6 phrase before you wrote your report? Was that just something
7 you identified when you read Mr. Tyler's report?

8 A. I don't think I had heard of it until I saw the Tyler
9 report.

10 Q. Okay. Did you make any adjustments to your win rate
11 based upon the number of products that a particular customer
12 might have been interested in any given year?

13 A. No.

14 Q. Because on the Salesforce data, as a customer,
15 there's often a list of a lot of different products, right?

16 A. Correct.

17 Q. And so if a customer do you look see if a customer
18 might have been interested in both the deferred and the
19 depreciation products, did they get double listed or is that
20 just a single entry?

21 A. That would just be a single entry on my schedules.

22 Q. Okay. And you understand that some of those
23 opportunities rolled over from year to year, correct?

24 A. I did see some of the same companies in more than one
25 year, yes.

1 Q. Okay. Did you do anything to account for that as
2 part of your analysis?

3 A. No, those just go into the total pool of potential
4 opportunities year by year.

5 Q. We can agree, though, if Lucasys had sold software to
6 a particular customer on a schedule in 2021, that same customer
7 would not have been an opportunity in 2022, right? For that
8 product?

9 A. Yes, for that product.

10 Q. But you didn't do anything to account for that as
11 part of your analysis?

12 A. No. I'm not forecasting any specific customer sale.
13 It's a much more general approach.

14 Q. Well, it may not be a specific customer, but it is a
15 subset. You are projecting a subset of the customers listed on
16 the schedule would have purchased software from Lucasys,
17 correct?

18 A. Yes, but not necessarily those customers. These are
19 serving as a proxy for the number of opportunities that might
20 be available to Lucasys.

21 Q. Got you. So this is just a proxy for you to assume
22 what the overall market could have been?

23 A. It was the best available evidence that I found for
24 an estimate of how many customers might be interested in those
25 types of products in any given year.

1 Q. Okay. And I may have asked this already, but what
2 did you do to test that assumption?

3 A. Other than looking at how PowerPlan used the
4 Salesforce database in the normal course of business, according
5 to the deposition testimony. I also looked at the number of
6 relationships Lucasys had with the IOUs in the industry. And I
7 looked at the past relationships that some of the key members
8 of Lucasys had with these types of customers and no significant
9 overlap.

10 Q. Right. And all those relationships were
11 relationships for consulting services, right.

12 A. From the --

13 Q. Previous -- I'm sorry. That was a bad question
14 because I assumed that we were still talking about what your
15 answer was. Let me restate the question. The relationships
16 you refer to that Lucasys had with customers, those were
17 relationships through providing consulting services, right?

18 A. Not necessarily. Because some of those relationships
19 likely stem from past work that members of Lucasys performed
20 while at PowerPlan.

21 Q. And they were performing consulting services for
22 those customers while at PowerPlan, right?

23 A. Partially, yes. I know they also worked on -- at
24 PowerPlan on customers who were software customers.

25 Q. Are you aware of any employee of Lucasys that was in

1 sales while at PowerPlan at any time?

2 A. I don't recall specifically.

3 Q. Okay. So you have no reason to disagree with my
4 statement that all of the employees of Lucasys that worked at
5 PowerPlan were on the consulting services side not on the sales
6 side, correct?

7 A. I don't have a specific reason to disagree with you.

8 Q. Okay. Did you investigate how PowerPlan tracks its
9 win rate based upon Salesforce data?

10 A. No, I didn't track PowerPlan's win rate.

11 Q. In fact, they don't -- I'll say -- do you have any
12 evidence that they calculate such a win rate based upon their
13 Salesforce data?

14 A. I would actually be surprised if they did, because
15 that's more of a damages concept than a normal operating
16 concept.

17 Q. Do you even know -- let's strike that. Other than
18 the deposition testimony that we mentioned earlier of the
19 PowerPlan's employees. You have no other knowledge about how.
20 PowerPlan uses the Salesforce data, correct?

21 A. Outside of their deposition testimony, yeah, I would
22 have no basis other than the deposition testimony.

23 Q. Lucasys' employees had no input into that, right?

24 A. Not that I'm aware of.

25 Q. And you didn't see any documents in the record

1 describing how the Salesforce data is used, just the deposition
2 testimony, right?

3 A. No documents other than the data itself?

4 Q. Yeah. And the data itself doesn't describe how it's
5 used, correct? The database itself doesn't describe how
6 PowerPlan uses it, correct?

7 A. No, it just describes the contents of the data
8 itself.

9 Q. Yeah. Although there is an anecdotal line in there,
10 right? Not line, column. There's an anecdotal column in the
11 data that whoever put inputs, the salesperson inputs some
12 narrative about what they're thinking, right?

13 A. I recall seeing a notes column.

14 Q. Yeah, I think it's column AM. Just not that I'm not
15 going to test you on that.

16 A. I'm not going to remember that.

17 Q. But there was some narrative. It wasn't just single
18 sentences filling in, I mean, single words filling in columns,
19 right?

20 A. There was narrative, yes.

21 Q. Did you review that narrative for the customers that
22 are listed on the schedules?

23 A. I skimmed through some of that. Whether I looked at
24 narratives for the specific customers on my schedules, I don't
25 recall.

1 Q. Okay. Now you also assumed -- made certain
2 assumptions that the customers that Lucasys would have sold
3 software to would be a mix of small, medium, and large
4 customers, right?

5 A. Correct.

6 Q. And to do this, you also use the data from the
7 Salesforce database, correct?

8 A. Only in part because, as far as their names go, yes.

9 Q. And then you also use the size of the customer,
10 though, from the names in the Salesforce data, right?

11 A. Well, the Salesforce data did not indicate the size
12 of the customer. I looked up external sources.

13 Q. Exactly. So you got the names from the Salesforce
14 data and then external sources you use to categorize them in
15 one of those three categories?

16 A. Correct.

17 Q. Did you do any investigation as to whether the mix of
18 customers that you were analyzing was similar to the mix that
19 PowerPlan actually sells to?

20 A. No.

21 Q. Did you, as part of your analysis, look at whether a
22 company was a subsidiary or a parent?

23 A. That was necessary to determine the overall size.
24 Because I think we discussed this a little bit earlier that
25 PowerPlan might list a subsidiary, that we had to go then and

1 look up the parent company to determine how large.

2 Q. Yeah. So the Salesforce data may have a name and it
3 may not exactly be the parent or the subsidiary, and you have
4 to then figure that who the actual customer is for purposes of
5 the size?

6 A. Correct. It took some matching.

7 Q. Yeah. And you did that as part of your analysis,
8 right?

9 A. Yes.

10 Q. You also have certain growth assumptions in your
11 model, right?

12 A. Yes.

13 Q. And those growth assumptions were based upon
14 interviews with Mr. Lantukh?

15 A. In part.

16 Q. What else?

17 A. His deposition, testimony, as well as some early
18 company forecasts.

19 Q. You didn't do any analysis of software markets in
20 general for that, though, did you?

21 A. Software markets in general, no, just the IOU market
22 at issue here.

23 Q. The IOU market issue. You did an analysis of the
24 market for enterprise software to be sold to IOUs?

25 A. I didn't do an analysis. I looked at the history of

1 the market and how PowerPlan took over for -- I'm forgetting
2 the name of the company that was around before PowerPlan and
3 how PowerPlan's software was adopted in the '90s.

4 Q. Did you look at growth rates for revenue for
5 PowerPlan?

6 A. Only generally, I looked at the history of -- based
7 on publicly available financial statements.

8 Q. Okay. You didn't do an analysis of actual growth of
9 revenue for these -- well, two of the four products is only
10 deferred tax and tax depreciation are offered by PowerPlan,
11 right? You didn't do an analysis of their growth rates for
12 those two products as part of your report?

13 A. Correct. PowerPlan doesn't sell those products.

14 Q. No. You didn't do an analysis of the two products of
15 the growth rates of the two products that PowerPlan, in fact,
16 sells deferred tax and tax depreciation as part of your
17 analysis of the growth rate for Lucasys, correct?

18 A. Specifically those two products. Correct.

19 Q. Okay. And you didn't do an analysis of anticipated
20 growth rates for PowerPlan on the consulting side in your
21 analysis of the potential growth rates for Lucasys on the
22 consulting side, correct?

23 A. Specific to consulting. Correct.

24 Q. You didn't do analysis of PowerPlan's business
25 anticipated growth rates at all, correct?

1 A. What period are you talking about?

2 Q. For your analysis of the growth rates in your report?

3 A. Not other than what we've already discussed.

4 Correct.

5 Q. I know I went through this with you before, but I was
6 a little confused. The example of, we used AEP where your
7 model assumes that they would have become a customer for
8 Copilot in 2019. And I think we established that they in fact
9 have recently become a customer for Copilot, right? We talked
10 about that earlier?

11 A. Yes.

12 Q. And follow up, so if AEP were to become a customer
13 for one of these software products now, then wouldn't that
14 affect your model?

15 A. In that unlikely scenario, that would be something I
16 would need to consider because I include forecasts of future
17 Lucasys' actual revenue to subtract from the But-For revenue
18 and the actual revenue -- forecasted, actual revenue for 2023
19 would include Copilot.

20 Q. Well, what about deferred tax? Why do you say that
21 that would be unexpected? Because AEP is a current customer,
22 right? Of Lucasys.

23 A. Right, but they've already made the decision to spend
24 a significant amount of money on renewing the PowerTax
25 solution. So they're not currently in the market for deferred

1 tax and depreciation.

2 Q. That's the point I was going to say I got. So that's
3 why you don't anticipate AEP becoming a customer for deferred
4 tax or tax depreciation, right?

5 A. Correct.

6 Q. And you have no opinion on whether or not another
7 customer may or may not become a customer of Lucasys in the
8 future after this lawsuit is over, right?

9 A. Certainly not in the near term. I don't understand
10 there's any potential deferred tax or depreciation customers in
11 the works at the moment.

12 Q. But you project license fees out for ten years,
13 right?

14 A. The license fee component, yes.

15 Q. And so if a customer were to become a licensee of
16 Lucasys in 2025, that could affect your damage model, right?

17 A. It shouldn't, no.

18 Q. Well, there's no revenue component being taken out of
19 your model for license fees starting in 2025, is there?

20 A. There's no actual revenue being subtracted. Correct.

21 Q. Okay. And so if an opportunity became a licensee in
22 2025, wouldn't that affect the damage model?

23 A. No.

24 Q. Why not?

25 A. Because the only revenues being forecasted beyond

1 2024 are license fee revenues of existing customers.

2 Q. But the same customer could purchase product in 2025
3 that could have purchased the product in 2022 or 2021, right?
4 It would just be a delayed purchase.

5 A. Again, unlikely, because once that opportunity is
6 lost, the customer is unlikely to go and reconsider a new
7 software package once it already has made a decision on its tax
8 software for quite some time.

9 Q. Well, all of these customers have had PowerTax for
10 quite some time, correct?

11 A. Yeah, 90 percent of the market, yes.

12 Q. There's no new entries that you know of, are there?

13 A. No.

14 Q. Whether it's 2019 or 2025, customer has to convince
15 Lucasys to switch from PowerTax to Lucasys, correct?

16 A. Correct.

17 Q. Now, when does your model assume that the
18 anticompetitive conduct by PowerPlan ceases?

19 A. I don't have an assumption on that conduct ceasing.

20 Q. Okay. So you didn't conduct any scenarios where the
21 anticompetitive conduct ceased in 2020, for instance?

22 A. No. I understand the conduct has been ongoing.

23 Q. Okay. And the same you have a scenario in which the
24 anticompetitive conduct ceases in 2023?

25 A. Well, not other than the conclusion of the

1 anticipated trial in 2023.

2 Q. Okay. Why is that relevant for the damage model?

3 A. That's relevant because, as I believe I mentioned in
4 the report, once the trial happens, if there's a decision at
5 the trial, then the market has the opportunity to be educated
6 on the outcome of the trial, and Lucasys presumably could move
7 forward at that point.

8 Q. Okay. There's no counterclaim pending now, you
9 understand that, right?

10 A. Correct.

11 Q. And are you aware of any letters that have been sent
12 by PowerPlan to any customer since 2020?

13 A. I'm not aware of any specific letters beyond 2020,
14 no.

15 Q. Okay. For Lucasys' pricing, you primarily relied
16 upon Mr. Lantukh's interview?

17 A. No.

18 Q. What did you do for pricing?

19 A. I looked at numerous documents in the record
20 regarding pricing.

21 Q. Okay. Can you give me a specific?

22 A. We had been talking about -- well, yeah, I can give
23 you a specific, Olsen Exhibit 6, Olsen Exhibit 5 would be two
24 of them.

25 Q. Those don't have actual pricing for software

1 licenses, do they?

2 A. Yes.

3 Q. Help me out. Exhibit 6, where do you see a price for
4 software licensing?

5

6

7

8 Q. I'm sorry, I'm on 6. You're on 5.

9 A. I'm sorry.

10 Q. No, that's my fault. Let's just do 6 first because I
11 pulled that one out first. Okay. Let's look at 6. This is
12 [REDACTED], right?

13 (Defendant's Exhibit No. Olsen 6 marked and identified.)

14 A. Right.

15 Q. And where does this have any information on software
16 licensing?

17

18

19

20

21 MR. MAYES: You have a different Exhibit 6 than the
22 one that I was handed.

23 MR. FRIEDMAN: My mistake. That I don't know how
24 that happened. Let's get that figured out.

25 MR. MAYES: That's what I have as Exhibit 6. That's

1 what you have in front of you. He has a change order.

2 MR. FRIEDMAN: That's Viola?

3 MR. MAYES: I don't see the customer listed. I'm
4 looking for that.

5 MR. FRIEDMAN: Let's go off the record for a few
6 minutes. Let me get my documents right. I'm sorry.

7 (Brief break taken.

8 BY MR. FRIEDMAN: (Resuming)

9 Q. I apologize for the mix up of the documents. So let
10 me just get these straight for everybody, for the record, okay?
11 What is marked as Exhibit 5 is the document referenced at
12 footnote 36 of your report.

13 MR. MAYES: What page is 36?

14 MR. FRIEDMAN: On page eleven. This is the [REDACTED]
15 order that we discussed briefly.

16 BY MR. FRIEDMAN: (Resuming)

17 Q. Is that right, Mr. Olsen?

18 A. For Exhibit 5, yes.

19 Q. Correct. Okay. And then Exhibit 6 is referenced in
20 schedule 10. It is the Florida Power document in footnote 5
21 relating to Copilot.

22 A. Okay.

23 Q. Right?

24 A. That makes more sense.

25 Q. Yeah. We went through these, and I didn't add that

1 when we were looking at those footnotes. And then Exhibit 7,
2 we go back to footnote 37 on page 11. It is the [REDACTED]
3 order email, correct?

4 A. Correct.

5 Q. And I asked you questions earlier today about
6 Exhibits 5 and 7. And these were both emails from Mr. Lantukh
7 to customers, correct?

8 A. They are.

9 Q. And I asked you if you were aware of any responses
10 from the customers. And are you aware of any responses from
11 either of the customers for the emails in Exhibit 5 and 7?

12 A. Not that I recall.

13 Q. Consistent with what you said before. But make sure
14 our record is clear.

15 A. That's good.

16 Q. I did not ask you about Exhibit 6 earlier. And
17 again, putting it back in context, this is something that's
18 referenced in schedule 10 under footnotes 5, right?

19 A. Yes.

20 Q. And we looked at the AEP and Suez documents, but we
21 didn't look at the FPL document in that footnote earlier,
22 correct?

23 A. Correct.

24 Q. And that's what this is a reference to?

25 A. That's my understanding of the document.

1 Q. Okay. And the Copilot is not a recurring license
2 fee?

3 A. Once installed, it likely would lead to that, yes.

4 Q. Where is that in this document?

5 A. It's not in the document.

6 Q. This document just simply says it's a [REDACTED] 0 change
7 order for installation, right?

8 A. That describes the implementation of Copilot.
9 There'd be other charges in the future likely had this moved
10 forward.

11 Q. So likely. What do you base that on?

12 A. The evidence in the record.

13 Q. You're aware of something in the record between
14 Florida Power & Light and Lucasys for a licensing fee for
15 Copilot?

16 A. Not specifically for Florida Power & Light, but other
17 proposals I've seen for Copilot which do involve implementation
18 fees as well as license fees.

19 Q. Okay. We agree that Exhibit 6 at least has no
20 pricing for license fee for Copilot?

21 A. Correct.

22 Q. How about Exhibit 5? The [REDACTED] document.

23 A. How about it? It doesn't reference Copilot at all.

24 Q. Well, how about any license fee for any product?

25 A. Again, this is just referencing the implementation

1 fee.

2 Q. Okay. Thank you. And the same with Exhibit 7, the
3 email from Mr. Lantukh to the representatives at [REDACTED]
4 [REDACTED]?

5 A. Again, I was just discussing implementation fee.

6 Q. Did you conduct any analysis to determine whether or
7 not the pricing in your model is reasonable?

8 A. The pricing is in line with all the proposals and all
9 the documents I saw. Which made me conclude it was reasonable.

10 Q. Did you compare it to PowerTax fees?

11 A. No, that would not be appropriate.

12 Q. Okay. Why would that not be appropriate?

13 A. Because I'm not forecasting PowerTax's fees. I'm
14 forecasting the Lucasys' products.

15 Q. These products, the Lucasys' products in particular,
16 deferred tax and tax depreciation are substitutes for PowerTax
17 modules, correct?

18 A. Correct.

19 Q. Isn't it important to the customer, as part of the
20 decision making process, the price of their substitute?

21 A. That might be important to the customer, but again,
22 I'm not forecasting PowerTax's products, I'm forecasting
23 Lucasys' products.

24 Q. The reasonableness of Lucasys' prices depend on what
25 the customer is willing to pay, right?

1 A. That could be a factor, yes.

2 Q. Notice that you price both the deferred tax and the
3 tax depreciation products the same, correct?

4 A. Well, I don't, Lucasys does.

5 Q. And did you do any analysis of whether that was
6 appropriate?

7 A. It was in line with their proposal, so yes.

8 Q. Okay. Are you aware of the fact that PowerPlan does
9 not price its modules -- deferred tax module and tax
10 depreciation module the same?

11 A. I've heard that, yes.

12 Q. We talked a little bit about the growth scenarios
13 earlier, right?

14 A. Yes.

15 Q. You have two scenarios of 20 percent and 30 percent
16 correct?

17 A. Correct.

18 Q. Did you choose those numbers?

19 A. Yes.

20 Q. And that was based upon discussions with Mr. Lantukh?

21 A. And review of the deposition testimony and the
22 documents in the record, yes.

23 Q. Okay. You also -- paragraph 71, you've got
24 percentages of the market that you assume Lucasys would
25 achieve, correct?

1 A. Correct.

2 Q. And how did you calculate those numbers?

3 A. Based on the total -- I believe it's the total
4 deferred tax sales divided by the IOU market.

5 Q. And how did you determine what the number of -- is it
6 number of customers in IOU market? Is that what we're talking
7 about?

8 A. Yeah, I believe the denominator there was 131.

9 Q. Right. But it's not by value, it's just by number of
10 IOUs, right?

11 A. By number, yes.

12 Q. Okay. So again, the assumption is that that
13 percentage of the market would switch from PowerTax to Lucasys'
14 products in the relevant time frame in your report, right?

15 A. Yeah, there's a couple of different timeframes, but
16 yes.

17 Q. Yeah. And that that would have happened But-For
18 PowerPlan's alleged conduct, correct?

19 A. According to the model I've come up with, yes.

20 Q. Yeah. And so you claim that the growth scenarios --
21 paragraph 73, I want to make sure we're on the same page. The
22 growth scenario appears realistic and reasonable, right?

23 A. In paragraph 73. That's what it says, yes.

24 Q. Do you have some expertise engaging the
25 dissatisfaction of customers with PowerPlan more than anyone

1 else?

2 A. No.

3 Q. And do you have some expertise in determining whether
4 the Lucasys team is qualified more than anybody else?

5 A. I've reviewed the background of the Lucasys' team,
6 which they all have quite a few years of experience in this
7 area. The main players have an experience specifically with
8 PowerPlan.

9 Q. My question is, do you have particular expertise to
10 judge that more than Josh does?

11 A. Well --

12 MR. MAYES: I'm very knowledgeable about many things,
13 Steve.

14 WITNESS: I'm in no position to judge my expertise
15 versus Josh's expertise.

16 BY MR. FRIEDMAN: (Resuming)

17 Q. You don't consider yourself an expert in the
18 qualifications of the Lucasys' team, but that is tough, isn't
19 it?

20 A. No, that's not an area I claim to be an expert in.

21 Q. Okay. And the same with the magnitude of the concern
22 exhibited by PowerPlan. You're not an expert to determine
23 whether that's more meaningful than anyone else can, correct?

24 A. No, I'm not considering myself an expert in that
25 area.

1 Q. Okay. And you're not an expert in determining
2 whether or not PowerPlan's actions in this case were dramatic
3 or not dramatic, correct?

4 A. I certainly have no opinions on how dramatic
5 PowerPlan's conduct was.

6 MR. FRIEDMAN: Okay. Thank you. Give me 10 minutes.
7 We're getting really close. Let me organize some notes. Okay,
8 let's go off the record.

9 (Brief break taken.)

10 BY MR. FRIEDMAN: (Resuming)

11 Q. Mr. Olsen, the customers on schedule 10 in the
12 footnotes, AEP, Suez, and Florida Power & Light, right?

13 A. Well, with respect to the software customers, yes.

14 Q. Yeah. You understood that Lucasys' representatives
15 had existing relationships with these customers from when they
16 worked at PowerPlan, right?

17 A. I don't specifically recall if that was only from
18 PowerPlan, because I know some of them worked like Vadim worked
19 at RCC, Mr. Chang worked at Deloitte. I don't know if they had
20 connection with those same customers -- employers.

21 Q. But they had existing relationships with those
22 customers from being in the business before Lucasys was found,
23 correct?

24 A. That's my understanding.

25 Q. Okay. Do you do any analysis of whether Lucasys had

1 relationships with any of the other IOUs in the marketplace?

2 A. I've seen lists of customers for which -- at least
3 the top three people at Lucasys had done business with in the
4 past as part of the AEP proposal. There were dozens of
5 customers listed.

6 Q. Dozens of customers listed that they had actually
7 done work for in the past or just that they had proposed
8 services to?

9 A. If memory serves, that's dozens of customers that
10 they had experience with.

11 Q. Okay. Do you do any analysis of the depth of any
12 relationships that Lucasys had with IOUs other than the three
13 we just mentioned that are shown on schedule 10?

14 A. Not beyond -- I understand there's deposition
15 testimony from Mr Lantukh saying they had deep relationships
16 with, I want to say, 40 to 50 of the IOUs.

17 Q. Okay. And you rely on his deposition for that and
18 there's no other source of information that you're aware of?

19 A. That seems corroborated by the lists that were
20 attached to the AEP proposal for example.

21 Q. Okay. But the lists that were attached to AEP
22 proposal didn't go into any detail as to the depth of any
23 relationships, right? Just was a list of entities.

24 A. Correct.

25 Q. Okay. Let's talk just a few minutes about the

1 variable cost. So based upon your projected number of
2 customers, Lucasys would have had to increase its staff, right?

3 A. At some point, yes.

4 Q. Okay. And they would have to engage new technical
5 expertise to fulfill the obligations to those customers, right?

6 A. Yes. I mean, that could be by increasing its staff.

7 Q. Well, particularly for consulting services, someone
8 has to be on site, right?

9 A. Not just for consulting service, but the
10 implementation of the software too.

11 Q. Yeah, implementation of the software, too. And how
12 many employees were there of Lucasys?

13 A. I know of at least five, and I think they're up to
14 seven.

15 Q. And how many of them had the technical expertise to
16 implement software?

17 A. As far as the technical side, I don't recall how many
18 of those had the technical.

19 Q. Okay. You didn't do any study of the availability of
20 additional talent or the costs associated of recruiting new
21 talent, right?

22 A. No. I do know that Lucasys has had offers out to
23 some additional employees back in the 2019, '20 timeframe.

24 Q. And how about the increased overhead costs associated
25 with it being a larger employer. Was that part of your

1 analysis and the variable cost?

2 A. Yes.

3 Q. You did a straight line regression analysis based
4 upon their prior cost?

5 A. It could be characterized that way, yes.

6 Q. Okay. Mr. Olsen, I know you said that you had
7 reviewed Dr. Tyler's report, correct?

8 A. Yes.

9 Q. I'm not going to put a copy in front of you. But as
10 you sit here today, is there anything that jumps to mind that
11 you think was incorrect in Dr. Tyler's report?

12 A. Well, on the topic of a variable cost, yes.

13 Q. What was that?

14 A. He claimed my variable cost of reproach the
15 regression is, he called it, doesn't work because of a lack of
16 statistical significance in the coefficients.

17 Q. Okay. You disagree with that analysis?

18 A. Right, statistical significance isn't necessary for
19 how I'm using the slopes of the coefficients in my analysis.

20 Q. Okay. Anything else that comes to mind in Dr.
21 Tyler's report?

22 A. Well, as you can imagine, he disagrees with most of
23 my report, so obviously I disagree with most of his.

24 Q. Well, I mean, a lot of it's about assumptions, what
25 about a particular opinion as opposed to an assumption in the

1 report? Is there any particular opinion in the report that
2 jumps out that you think he misunderstands?

3 A. Again, on the topic of variable costs, I know he
4 claims that I should have included the consulting and
5 professional fees expense. And that's just simply wrong
6 because the consulting and professional expense related
7 entirely to non-tax consulting revenues. And I'm not
8 forecasting non-tax consulting revenue. So it's not
9 appropriate to include that.

10 Q. You don't expect those to continue to occur, right?

11 A. Correct.

12 Q. That's a reasonable assumption, right?

13 A. And the data (unintelligible) of that out, yes.

14 MR. FRIEDMAN: Okay. I think that's all I've got for
15 you.

16 MR. MAYES: Yes. No questions for us.

17 (The proceedings were thereby concluded at
18 12:56 p.m.)

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D I S C L O S U R E

STATE OF GEORGIA

DEPOSITION OF GARY OLSEN

COUNTY OF HENRY

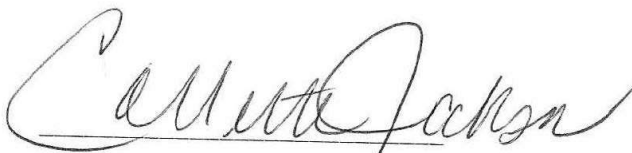
MARCH 17, 2023

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This, March 17, 2023



COLLETTE JACKSON, OCR
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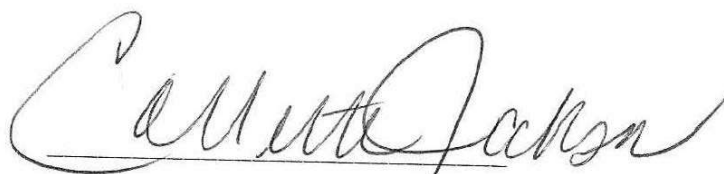
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That the foregoing transcript is a true and accurate
account of evidence and testimony taken by me in the matter of
LUCASYS INC., versus POWERPLAN, INC., (GARY OLSEN, EXPERT
WITNESS) to the best of my ability.

I further certify that the foregoing pages 5 through 98 of
testimony represent a true and correct record of the evidence
given upon said plea;

And I further certify that I am not a relative by blood or
marriage, or an employee of attorney or counsel of any of the
parties in the case, nor am I financially or in any way
interested in the outcome of the action.

This, March 21, 2023



COLLETTE JACKSON, CCR
No. 5741-5233-4639-1040
CERTIFIED COURT REPORTER

Notice Date: 03/22/2023

Deposition Date: 3/17/2023

Deponent: Gary Olsen

Case Name: Lucasys Inc. v. Powerplan, Inc.

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CERTIFICATE OF DEPONENT

I hereby certify that I have read and examined the foregoing transcript, and the same is a true and accurate record of the testimony given by me.

Any additions or corrections that I feel are necessary, I will attach on a separate sheet of paper to the original transcript.

Signature of Deponent

I hereby certify that the individual representing himself/herself to be the above-named individual, appeared before me this ____ day of _____, 20__, and executed the above certificate in my presence.

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